

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

GERALD CARTER

V.

**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT**

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CIVIL ACTION NO. 5:11-CV-492 FB

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE ARBITRATOR:

Comes Now Plaintiff GERALD CARTER and files this response to the motion for summary judgment filed by the Defendant in this matter requesting that the court deny the motion and in respect thereof would respectfully show:

I.

PARTIES

1. Plaintiff is GERALD CARTER (hereinafter "Carter"), a former employee of Defendant who was terminated after complaining of the discriminatory, harassing and retaliatory actions of Defendant.
2. Defendant NORTHSIDE INDEPENDENT SCHOOL DISTRICT (hereinafter "NISD") was the former employer of Plaintiff herein.

II.

FACTS

3. Pending before the Court is a Motion to Remand filed by the Plaintiff (Dkt 18) on or about January 31, 2012.
4. This is an action under the Texas Labor Code for disability discrimination, harassment,

retaliation and wrongful termination and to correct unlawful employment practices by Defendant NISD.

5. All conditions precedent to jurisdiction for filing the claim have occurred or been complied with: a charge of discrimination was filed with the Equal Employment Opportunity Commission and therefore filed with the Texas Workforce Commission within one hundred and eighty days of the acts complained of herein and Plaintiff's Complaint was filed within sixty days of Plaintiff's receipt of the issuance of a right to sue letter. By filing with the EEOC, Plaintiff's Charge of Discrimination was jointly filed with and investigated by the Texas Workforce Commission, Civil Rights Division, a state agency (TWCCRD), within 180 days of the acts complained of.

6. Plaintiff GERALD CARTER was formerly an employee of defendant Northside Independent School District. Plaintiff faithfully worked for the Defendant since October of 2007 as a teacher at Mary Michael Elementary School.

7. In November 2009, and January 2010, Plaintiff was counseled on performance issues. On or about March 29, 2010, the Superintendent notified Plaintiff in writing that Plaintiff would not be given a new two (2) year contract. Plaintiff was told that once Plaintiff's then current contract for the 2010 - 2011 school year was completed, Plaintiff would cease to be employed by Defendant Northside. Plaintiff believed he was being discriminated against in violation of the disability provisions of the Texas Labor Code, which had the same requirements and standards as the Americans with Disabilities Act of 1990, and filed a Charge of Discrimination with the Equal Employment Opportunity Commission on April 26, 2011, under Charge No. 451-2010-00999. Thus, the claim was dually filed with the Texas Workforce Commission.

8. After the date of filing his initial Charge of Discrimination, Plaintiff suffered retaliation.

During the week of January 3, 2011, Plaintiff was met with increasing pressure and harassment by Defendant. This occurred in the form of two (2) official reprimands, three (3) observations by supervisors, and two (2) required meetings with administration, all in the first four (4) days back. Plaintiff was told in a meeting that as of January 4, 2011, Defendant would not recommend Plaintiff for renewal of his contract based on Plaintiff's performance and reprimands. The Principal at Mary Michael Elementary made Plaintiff's job increasingly difficult by focusing intently on any infraction that occurred.

9. Plaintiff had to endure Defendant's supervisors monitoring his classroom and having to attend weekly meetings to discuss Plaintiff's performance, thereby making Plaintiff's job performance difficult under the intensive supervision of Defendant. Plaintiff was informed by Defendant's attorney of record that the mandatory meeting would cease if Plaintiff dropped his first Charge of Discrimination against Defendant. Plaintiff did not drop the initial Charge of Discrimination against Defendant and therefore, the mandatory meetings continued.

10. Plaintiff had been diagnosed by his treating physician with clinical depression and anxiety, and most recently with ADHD. The Principal and Vice Principal were both aware of Plaintiff's medical conditions and how these conditions were affecting his job performance. Defendant was fully aware that Plaintiff's clinical depression would intensify if there was an increased anxiety and loss of sleep, as Defendant had received letters from Plaintiff's treating physician, as well as personal appeals from Plaintiff.

11. In June 2010, Plaintiff, with the direction of his treating physician, requested certain accommodation in order to alleviate the stress he was put under by Defendant, and even went to far as to request he be moved to another facility. Defendant, in turn, denied the accommodations.

12. Due to the continued stress Plaintiff was being subjected to, on April 22, 2011 Plaintiff has no alternative but to constructively terminate his employment with Defendant.

13. Plaintiff asserted he was disabled, as defined by the Texas Labor Code, which has adopted the definitions under the Americans with Disabilities Act (ADA). The Plaintiff's clinical depression and other medical conditions substantially limited some of his life activities. Prior to his constructive termination, and prior to Defendant's harassment and retaliation, Plaintiff was otherwise qualified and able to perform the essential functions of his job as a Teacher.

14. Plaintiff is/was an employee.

15. Defendant is/was an employer.

16. Defendant violated the Labor Code by discriminating against Plaintiff through failure to reasonably accommodate Plaintiff's disability. Plaintiff could reasonably accommodate the Plaintiff but was unwilling to do so. Though it was known and obvious to the Defendant that the Plaintiff would require accommodations due to the fact that the Plaintiff continued under the care of a physician for his medical conditions, the Defendant did not make accommodations when the Plaintiff requested them based on his disability and/or based on the perception of his disability.

17. Additionally, Plaintiff asserted Defendant intentionally discriminated against Plaintiff because of his disability. Defendant's discriminatory acts include retaliating against and causing the constructive termination of Plaintiff for Defendant's failure to accommodate his disability.

III.

THE EVIDENCE

18. Plaintiff CARTER relies upon and incorporates herein the pleadings on file in the court

(Plaintiff requests that the Court take judicial notice of the Court's file), the Exhibits attached to this response, including the depositions and exhibits attached hereto and documents filed in this cause and any other matter attached to Plaintiff's Response to Defendant's Motion for Summary Judgment and/or unobjected to and uncontroverted in Defendant's Motion.

19. Plaintiff has established evidence to create a fact question regarding discrimination and retaliation and constructive discharge or wrongful termination as evidenced by the evidence raised in the deposition of GERALD CARTER (Attached Hereto as Exhibit "A"), and any other attachments. Plaintiff establishes sufficient facts to deny summary judgment as to all or part of Defendant's motion. The evidence and reasonable facts that can be drawn therefrom demonstrate the following:

20. A. Deposition of Plaintiff Gerald Carter (Exhibit "A")

Plaintiff Gerald Carter testified that he took Zoloft, Abilify, Vyvanse and Klonopin. He testified tat he had been on Zoloft for three years for depression and on antidepressants for longer. He had been taking Klonopin since 2005 for anxiety. He had been taking Vyvanse since 2009 for his ADHD (depo at p. 9 ll 1-25).

Carter had worked for Northside in late 1999 through 2002 and then resigned to work in Pleasanton (P. 25 l. 13- 26 l. 7). In May 2007, he decided to go back to Northside to get a fresh start because he had suffered depressive episodes in October 2005 . He suffered depression, anxiety and loss of sleep. In August or September 2005, he sought treatment from his family physician, who diagnosed him with major depression disorder and anxiety. He immediately began counseling for the disorders and disabilities and continued through 2009. He was eventually treated through Alamo Mental Health Group (p. 27 l. 2-30 l. 18).

While at Pleasanton his work became more difficult. He had to work to focus more and

paperwork became more difficult. He did not ask Pleasanton for an accommodation but was given one by the Principal . He was able to perform his work but missed some days (p. 30 l. 25-33l. 22).

He returned to Northside in October 2007, working for Michael Elementary. He still suffered from his disabilities, was able to perform the work and was on medication. In October 2009, he checked himself into Laurel Ridge for treatment after being reprimanded or counseled by vice-principal Massiatte because he had not turned in his lesson plans. The counseling had led to a depressive attack . He took leave from school for the treatment (p. 33 l. 23- 37 l. 16). He would tear up on a daily basis but would not tear up in front of his students . He would go to the restroom to gather himself. He was able, as described in his job description, to maintain emotional control under stress (38 l. 6- 40 l. 16).

His students did not do well on reading tests because he refused to give them multiple attempts at the test. He did not feel that would be a realistic representation of their abilities . This was before the TAKS test. He had been written up for failing to timely turn in his lesson plans. He had taken four weeks of leave related to his condition. He was at Laurel Ridge for about two weeks and then was at home and getting treatment for about two weeks. It had been recommended by his doctors that he remain on leave rather than return to work because of the problems he was having with the attitudes of Massiatte and Principal Shaw (42 l. 25-45 l. 7).

He had been written up for not having grades in December 2009, when he was not on campus because of his treatment. He had received a writeup in January 2010. He felt that the substitute during his absence would have taken care of it but he received the writeup for that conduct. (P. 53 l. 20-54 l. 14).

Carter went in for medical treatment again in February 2010. He was suffering from

severe depression with cognitive disabilities at the time. He was on leave until the end of the school year. In April 2010, he filed a charge of discrimination and retaliation because while he was on medical leave attempting to get better from his disabilities, he was sent a letter telling him that his contract would not be renewed for the following school year. His principal had recommended that he not be extended even though he intended on going back with some accommodation for his disabilities. He was suffering discrimination because of his depression. He was written up inaccurately and unfairly as he had explained and the school district was trying to get rid of him. He thoroughly described the acts of discrimination and retaliation, including increased and unnecessary walk throughs and reviews after his medical treatment by Massiatte and Shaw (54 l. 15- 62 l. 18). He testified that while he had been written up for not having turned in all his lesson plans on time, with the exception of the October reprimand, he had turned them all in on time online (63 ll 4-15).

He was released from medical treatment and returned back to work in January 2010, only to be met with an unjustified reprimand for grades related to the period of his treatment and absence. During his absence, he is told his contract for the following year is not going to be renewed (65 l 23-68 l. 3). In June 2010, Ms. Shaw informs him that he is going to be reassigned to the first grade for the following year. He had asked for an accommodation by transferring him to another school where he did not have to work with Massiatte and Shaw but was refused. (68 l. 3-69 l. 12). In August 2010, he began teaching first grade. In the summer of 2010, he met with Jim Miller of HR to discuss accommodations related to his disabilities. Ms. Shaw was also present. His prior requests for accommodation had been ignored or watered down and he was placed on a TINA or Teacher in Need of Assistance Plan. They made him attend weekly mandatory meetings which caused additional stress. In January 2011, Shaw again gave him a

write up regarding grade book entries. He indicated there were no requirements for gradebook entries of which he was aware but he was being reprimanded, which was discrimination and retaliation (69 l. 17- 73 l. 15). A week later, he filed another EEOC charge for discrimination and retaliation because within the first four days after he came back to school, he was given four reprimands (77 l. 9-l. 23).

He met with Miller at the beginning of the school year to discuss his written request for accommodations related to his disabilities, as documented by his doctor. Miler was dismissive. Carter told hm, "Is it your intent not to give me any of those accommodations?" Miller picked up the paper, dropped it in the file and said "duly noted." No accommodations were provided. (78 l. 16-79 l. 23). Instead, he came back to a microscope of weekly meetings, going over everything he did, was subjected to observations. He was not provided with the help requested to resolve the issues, just recommendations to be terminated (80 l. 13-81 l. 16).

Carter had received the letter from the Superintendent of the intent to not renew his contract. Carter was aware that if there was a non-renewal, it would make it more difficult to find a future job because schools would note the non-renewal. In April of 2011, he resigned because he was not going to be given the accommodations he requested and he was faced with the damage of non-renewal (83 l. 14-l.23). He had no choice but to resign.

Carter testified that he was seeking to get his job back and to have the discriminatory reprimands removed. He testified that he suffered grief and emotional distress related to his treatment and their being dismissive of his illness and his doctors' notes. He had a period of unemployment and lost wages as a result. He lost his job and suffered financial losses and emotions and tearfulness as a result.(86 l. 10-93 l. 3).

IV.

SUMMARY JUDGMENT STANDARD OF REVIEW

21. Summary judgment is appropriate when the pleadings, affidavits and other summary judgment evidence show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©; Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2551, 91 L.Ed.2d 265 (1986). The moving party bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S. at 322-25, 106 S.Ct. at 2551-54. Once a movant makes a properly supported motion, the burden shifts to the nonmovant to show that summary judgment should not be granted; the nonmovant may not rest upon allegations in the pleadings, but must support the response to the motion with summary judgment evidence showing the existence of a genuine fact issue for trial. *Id.* at 321-25, 106 S.Ct. at 2551-54; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255-57, 106 S.Ct. 2505, 2513-14, 91 L.Ed.2d 202 (1986). All evidence and reasonable inferences must be viewed in the light most favorable to the nonmovant. United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962).

22. In summary, resolving the Motion hinges on whether Defendant establishes “no genuine issue as to any material fact.” FED. R. CIV. P.56(c). In Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000), the Supreme Court articulated the following six principles for courts to follow in making this determination:

First, courts must review the summary judgment record “taken as a whole.” *Id.* at 150 (quoting Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 547, 587 (1986)). Cherry picking is not permitted.

Second, courts “must draw all reasonable inferences in favor of the nonmoving party.” Reeves, 530 U.S. at 150 (citing cases); see also Burrell v. Dr. Pepper/Seven Up Bottling Group, 482 F.3d 408, 411 (5th Cir. 2007) (“We construe all facts and inferences in the light most favorable to the non- moving party”).

Third, courts “may not make credibility determinations or weigh the evidence.” Reeves, 530 U.S. at 150 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)) (“Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge”).

Fourth, courts must disregard all evidence favorable to the movant that the jury is not required to believe. Reeves, 530 U.S. at 150 (citing 9A C. Wright & A. Miller, Federal Practice & Procedure § 2529, p. 299 (2nd ed. 1995)).

Fifth, courts should give credence to the evidence favoring the nonmovant. Reeves, 530 U.S. at 151.

Sixth, courts may give credence to the evidence favorable to the movant only to the extent that it is “uncontradicted and impeached,” at least to the extent that it comes from “disinterested witnesses.” Id.

23. The Motion ignores these principles. Indeed, the Motion amounts to nothing more than a advocate’s unsupported trial brief, for it puts emphasis on Defendant’s spin on the facts, which is inappropriate in a summary judgment context. While there is room for advocacy in a motion for summary judgment, such advocacy should not displace the above-referenced principles mandated by the Supreme Court and construing facts in the nonmovant’s favor.

V.

METHOD OF PROOF

24. “Direct evidence” is rare in employment cases. As one court put it, “[e]mployers rarely leave concrete evidence of their retaliatory purposes and motives.” Nowlin v. Resolution Trust Corp., 33 F.3d 498, 508 (5th Cir. 1994). Another court put it this way:

Unless the employer is a latter-day George Washington, employment discrimination is as difficult to prove as who chopped down the cherry tree. (Citation omitted). Employers are rarely so cooperative as to include a notation in the personnel file, ‘fired due to age,’ or to inform a dismissed employee candidly that he is too old for the job.

Thornbrough v. Columbus & Greenville R.R. Co., 760 F.2d 633, 640-41 (5th Cir. 1985). As a result, and to “to ease the evidentiary burden on employment plaintiffs,” Id., most employment

cases turn on circumstantial evidence, which “is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.” Desert Palace v. Costa, 539 U.S. 90, 100 (2003). The present case follows this trend. Defendant’s motion should be denied.

VI.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO CONSTRUCTIVE DISCHARGE CLAIM-FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

25. Defendant seeks summary dismissal of Plaintiff’s constructive discharge claims, contending that while Plaintiff filed a charge and subsequent retaliation charge, he never filed a charge related to his termination. The termination resulted after he filed his initial charges.

26. Defendant’s arguments are disingenuous in light of the law of which Defendant is well aware. It is undisputed that a trial court is without jurisdiction to consider claims brought under section 21 of the Texas Labor Code (the Texas Commission on Human Rights Act, “TCHRA”) unless the aggrieved party has exhausted his administrative remedies by filing a complaint with the Texas Workforce Commission – Civil Rights Division. See Elgahil v. Tarrant County Junior Coll., 45 S.W.3d 133, 141 (Tex. App. – Fort Worth 2000, pet. denied).

27. It is well-settled that no separate EEOC charge is legally required to bring a claim for retaliation occurring after the filing of a first EEOC charge. The leading case on this topic is Gupta v. East Texas State University, 654 F.2d 411 (5th Cir. 1981). In *Gupta*, the plaintiff filed two EEOC charges. His employment was terminated, allegedly in retaliation for his filing of those charges. However, he never filed a third EEOC charge alleging retaliatory termination. Gupta, 654 F.2d at 413. Nonetheless, the Fifth Circuit allowed this claim to proceed, holding that “it is unnecessary for a plaintiff to exhaust administrative remedies prior to urging a retaliation claim growing out of an earlier charge . . .” *Id.* at 414. The Fifth Circuit explained that:

There are strong practical reasons and policy justifications for this conclusion. It is the nature of retaliation claims that they arise after the filing of the EEOC charge. Requiring prior resort to the EEOC would mean that two charges would have to be filed in a retaliation case, a double filing that would serve no purpose except to create additional procedural technicalities when a single filing would comply with the intent of Title VII. We are reluctant to erect a needless procedural barrier to the private claimant under Title VII, especially since the EEOC relies largely upon the private lawsuit to obtain the goals of Title VII. Intertwined with this practical reason for our holding is a strong policy justification. Eliminating this needless procedural barrier will deter employers from attempting to discourage employees from exercising their rights under Title VII.

Gupta, 654 F.2d at 414 (citations omitted). Thus, the district court had jurisdiction to hear the plaintiff's claim of termination and retaliation even though he did not file a separate EEOC charge complaining of that termination. *Id.*

Gupta has been followed on this point several times in Texas state courts. See San Antonio Water System v. Odem, 2007 WL 2376147 at *2-*3 (Tex.App.–San Antonio 2007, no pet.) (memo. op.); Elgaghil v. Tarrant County Junior College, 45 S.W.3d 133, 141-42 (Tex.App.–Fort Worth 2000, pet. denied); Thomas v. Clayton Williams Energy, Inc., 2 S.W.3d 734, 738 (Tex.App.–Houston [14th Dist.] 1999, no pet.). In each of these cases, the plaintiffs were permitted to pursue actions for retaliation based on the filing of EEOC charges, without filing additional EEOC charges to complain of that retaliation. Thus, Defendant's contentions with regard to the termination and retaliation claim should be denied.

28. With regard to constructive discharge, Carter has met his burden. He has demonstrated that he suffered retaliation after his treatment and initial EEOC charges. He has also demonstrated that his requests for accommodations were ignored and that he was left with no alternative but to resign.

VII.

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AS TO DISCRIMINATION AND RETALIATION CLAIMS**

29. Defendant seeks summary dismissal of all of Plaintiff's claims, contending that Plaintiff cannot raise a genuine issue of material fact with regard to any of his claims, and that it is therefore entitled to judgment as a matter of law.

30. Discrimination And Accommodation Claims

Plaintiff was an employee who suffered from a disability or was perceived to have suffered from a disability. He requested accommodations but was not provided any. Moreover, the evidence demonstrates that Plaintiff was discharged or constructively discharged and thus suffered an adverse employment action and suffered discrimination and harassment and was treated differently than others not in the protected group for disability. There are questions of fact as demonstrated by the facts set out above and Defendant's summary judgment should be denied.

31. Title I of the Americans with Disabilities Act addresses disability-based discrimination in the employment context, which has been adopted under the Texas Labor Code and is used for guidance. Title I's main provision prohibits employers from:

discriminat [ing] against a qualified individual with a disability because of the disability of such an individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms and conditions, and privileges of employment."

42 U.S.C. §12112(a). To prove a claim for disability based discrimination, a plaintiff must show that: (1) she is qualified for her position; (2) she has a disability; and (3) she was discriminated against because of her disability. *Jenkins v. Cleco Power, LLC*, 487 F.3d 309, 315 (5th Cir. 2007); *Picard v. St. Tammany Parish Hospital*, 611 F.Supp. 2d 608 (E.D. La. 2009).

32. The ADA defines disability as a “physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. §12102(1)(A). A physical impairment may include “[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss . . .” *Picard, supra*, at 613. Major life activities “are those activities that are of central importance to most people’s everyday lives.” *Jenkins, supra*, at 315. Major life activities include “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” *Mason v. United Air Lines, Inc.*, 274 F.3d 314, 317 (5th Cir. 2001) (quoting 29 C.F.R. §1630.2(I)).

33. A major life activity will be considered “substantially limited” when the individual is unable to perform a major life activity that the average person in the general population can perform; or is significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. *McInnis v. Alamo Cmty Coll. Dist.*, 207 F.3d 276, 280 (5th Cir. 2000) (quoting 29 C.F.R. §1630.2(j)). In determining whether an impairment is substantially limiting, courts may consider the nature and severity of the impairment, the expected duration of the impairment, and the expected permanent or long term impact resulting from the impairment. *EEOC v. Agro Distribution, LLC*, 555 F.3d 462, 470 (5th Cir. 2009).

34. The ADA imposes an affirmative duty on covered employers to reasonably accommodate the known physical and mental limitations of their disabled employees. Failure to make such an accommodation is a prohibited form of discrimination. *Picard, supra*, at 618; see 42 U.S.C. §12112(a). The ADA prohibition against discrimination includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee.” 42 U.S.C. §12112(b)(5)(a). Plaintiff was not provided an accommodation. Employers are, therefore, under a duty to provide their disabled employees with reasonable accommodations “in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.” *Picard, supra*, at 619. Because the failure to reasonably accommodate an employee’s disability is, by definition, a failure to provide that employee with an equal employment opportunity, the court in *Picard* found it unnecessary to prove a separate “adverse employment action” element in a

failure to accommodate case. *Picard, supra*, at 620. This finding is in agreement with an unpublished Fifth Circuit decision, as well as with the Fifth Circuit Pattern Jury Instructions. *See Bridges v. Dept. of Social Services*, 254 F.3d 71, 2001 WL 502797 at *1 (5th Cir. 2001) (unpublished); Fifth Circuit Pattern Jury Instructions: Civil §11.7.2 (2006 ed.). Other circuits agree: *Rodal v. Anesthesia Group of Onondaga, P.C.*, 369 F.3d 113, 118 (2d Cir. 2004); *Stevens v. Illinois Dept. of Transp.*, 210 F.3d 732, 736 (7th Cir. 2000).

VIII.

DEFENDANT IMPROPERLY RELIES ON INTERESTED WITNESS TESTIMONY FEDERAL COURT APPROACH TO SUMMARY JUDGMENT PRECLUDES SUMMARY JUDGMENT

35. Defendant in this case primarily relies on the interested testimony or documents of its employees as the grounds and evidence for its summary judgment motion, . In Reeves v. Sanderson Plumbing Products, Inc., the Supreme Court clarified the approach a court should use when granting a judgment as a matter of law. The court must draw all reasonable inferences in favor of the nonmoving party and not make credibility determinations or weigh the evidence. Credence must be given to the evidence supporting the nonmovant as well as any evidence supporting the moving party that is uncontradicted, unimpeached, and not attributable to interested witnesses. Plaintiff objects to the following declarations of interested witnesses, including the declaration of Lori Shaw, the Principal at the center of the controversy (exhibit B with supporting documentation to summary judgment motion), Declaration of J. Mark Hardison, employee benefits coordinator for Defendant with attachments (Exhibit C), whose statements are self serving and not properly subject to contradiction regarding Plaintiff's claims or intent of Defendant). Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150-51, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).

36. Therefore, all evidence of interested witnesses must be disregarded and all of the evidence in the record must be reviewed in favor of Plaintiff, drawing all reasonable inferences

in favor of Plaintiff. Reeves, 530 U.S. at 150, 120 S.Ct. 2097. Defendant's motion is largely based on the testimony of interested witnesses, to which Plaintiff objects.

IX.

PRAYER FOR RELIEF

37. PREMISES CONSIDERED, Plaintiff prays that the Defendant's motion be denied in whole or in part, and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully Submitted,

By: 

ADAM PONCIO

State Bar No. 16109800

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2012, I electronically filed the foregoing document with the Clerk of Court using the CMECF system which will send notification of such filing to the following:

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Walsh, Anderson, Brown,
Gallegos & Green, P.C.
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ADAM PONCIO

EXHIBIT A

1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GERALD CARTER
vs.
NORTHSIDE INDEPENDENT
SCHOOL DISTRICT

CASE NO. 5:11-cv-00492 FB

ORIGINAL

ORAL VIDEOTAPED DEPOSITION
GERALD LEON CARTER
December 19, 2011

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2

1 APPEARANCES

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20

21 ALSO PRESENT:

22 Mr. Marcelino Gutierrez, Videographer

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24

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1 ORAL ANSWERS AND DEPOSITIONS of the witness,

2 GERALD LEON CARTER, who resides in San Antonio, Texas,

3 in answer to questions propounded to him in the above

4 styled and numbered cause, taken on behalf of the

5 Defendant, before TERRILYN PAUL CROWLEY, a Certified

6 Shorthand Reporter in and for the State of Texas, on

7 December 19, 2011, in the PONCIO LAW OFFICES, 5410

8 Fredericksburg Road, Suite 109, San Antonio, Texas,

9 between the hours of 9:10 a.m. and 12:04 p.m., of said

10 day, pursuant to notice and the Rules.

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4

1 INDEX

2

3 GERALD LEON CARTER

4 Examination by Mr. Wood6

5

6 Changes and Signature.....108

7 Reporter's Certificate.....108

8

9 EXHIBITS

10 (None offered)

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1 THE VIDEOGRAPHER: We're on the record on
 2 December the 19th, 2011 at 9:10 a.m.
 3 GERALD LEON CARTER,
 4 having been first duly sworn, testified as follows:
 5 EXAMINATION
 6 Q. (By Mr. Wood) Good morning, Mr. Carter. My
 7 name is Craig Wood, and I am the attorney from
 8 Northside Independent School District in connection
 9 with a lawsuit that you've brought against the
 10 district.
 11 You and I have met for the first time
 12 this morning. Is that correct?
 13 A. Yes.
 14 Q. I want to reach certain agreements before we
 15 begin. And for purposes of the deposition, it's very
 16 important that you listen to my question. If you don't
 17 understand the question, would you ask me to repeat it
 18 or restate it?
 19 A. Certainly.
 20 Q. And it's also important so that the court
 21 reporter can take down what you are testifying that you
 22 answer verbally rather than nodding or shaking your
 23 head. Will you do that?
 24 A. Yes.
 25 Q. And, likewise, if you could avoid saying uh-huh

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7

1 Q. Will you state your full name for the record.
 2 A. Gerald Leon Carter.
 3 Q. What's your date of birth, Mr. Carter?
 4 A. [REDACTED]
 5 Q. Your Social Security number?
 6 A. [REDACTED]
 7 Q. And do you hold a driver's license?
 8 A. Yes.
 9 Q. From the State of Texas?
 10 A. Yes.
 11 Q. Do you know the number to that driver's
 12 license?
 13 A. Yes.
 14 Q. What is that?
 15 A. [REDACTED]
 16 Q. Do you hold a driver's license from any other
 17 states?
 18 A. No.
 19 Q. What's your address, Mr. Carter?
 20 A. [REDACTED]
 21 Q. What is your telephone number?
 22 A. [REDACTED]
 23 Q. How long have you lived at Vantage Point?
 24 A. I've lived there since 2000.
 25 Q. Are you married, Mr. Carter?

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6

1 or huh-uh, it will make it more clear as to what your
 2 responses are.
 3 A. Yes.
 4 Q. Have you ever given your deposition before, Mr.
 5 Carter?
 6 A. No.
 7 Q. You understand that you're under oath and that
 8 you're sworn to tell the truth just as if you were in
 9 front of the judge and jury today?
 10 A. Yes.
 11 Q. If you need to at any point, please let me know
 12 and we can take a break, if you need to take a comfort
 13 break or get something to drink or whatever.
 14 A. All right. Thank you.
 15 Q. I want to make sure that you're comfortable.
 16 This is my only chance to hear your side
 17 of the story before this matter goes to trial.
 18 So it's very important that you be as forthcoming as
 19 possible. There may be times during your testimony
 20 during which Mr. Poncio objects. That's his job to do
 21 that. Nonetheless, after his objection is stated for
 22 the record, I'm going to ask that you answer the
 23 question, unless he specifically instructs you not to
 24 do so and you accept that advice. Will you do that?
 25 A. I understand.

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8

1 A. Yes.
 2 Q. To whom are you married?
 3 A. [REDACTED]
 4 Q. How long have you been married to [REDACTED]
 5 [REDACTED]?
 6 A. [REDACTED] years last week.
 7 Q. Are you happily married?
 8 A. Certainly.
 9 Q. Do you have any children?
 10 A. Yes.
 11 Q. And what are their names and ages?
 12 A. One daughter. Her name is [REDACTED], and she is
 13 [REDACTED].
 14 Q. Do you have any other dependents besides your
 15 wife and your daughter?
 16 A. No.
 17 Q. Mr. Carter, is there any physical impairment to
 18 you understanding and answering my questions today?
 19 A. No.
 20 Q. Are there any mental or emotional impairments
 21 that might prevent you from understanding and answering
 22 my questions?
 23 A. No.
 24 Q. Are you taking any type of medication?
 25 A. Yes.

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9

1 Q. What medications are you taking today?
 2 A. I'm taking Zoloft, Abilify, Vyvanse and
 3 Klonopin.
 4 Q. The Zoloft, do you know the dosage on that?
 5 A. 200 milligrams.
 6 Q. How long have you been taking that?
 7 A. I believe it's -- I believe it's been three
 8 years, but I've been on anti-depressants for longer.
 9 Q. As far as the Klonopin, how long have you been
 10 taking that?
 11 A. It's been taken since 2005.
 12 Q. Excuse me, let me back up. What is the Zoloft
 13 for?
 14 A. To treat depression.
 15 Q. What about the Klonopin, what is that for?
 16 A. Anxiety.
 17 Q. The Vyvanse, do you know what dosage you take
 18 of that?
 19 A. I believe it's 40 milligrams.
 20 Q. And how long have you been taking the Vyvanse?
 21 A. I would have to double check with
 22 Dr. Salinas, but I believe she gave it to me in
 23 2000 -- October of 2009.
 24 Q. And what is the purpose of the Vyvanse?
 25 A. To treat adult ADHD.

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11

1 deposition?
 2 A. I reviewed previous e-mails and papers that I
 3 had kept, the same papers that I had forwarded.
 4 Q. Where did you do that?
 5 A. At home.
 6 Q. Did you meet with your attorney in preparation
 7 for your deposition?
 8 A. No.
 9 Q. Did you have any conversations with anyone in
 10 preparation for your deposition?
 11 A. Other than my wife wishing me good luck, no.
 12 Q. Have you talked about anyone -- excuse me. Have
 13 you talked to anyone at the school district since you
 14 resigned from the district?
 15 A. No.
 16 Q. None of the staff at the school or
 17 administration?
 18 A. No.
 19 Q. Have you ever been a party to a lawsuit before?
 20 A. No.
 21 Q. Have you ever been arrested?
 22 A. No.
 23 Q. Have you ever been involved in a lawsuit as a
 24 witness?
 25 A. No.

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10

1 Q. And what was the fourth medication that you
 2 mentioned?
 3 A. Abilify.
 4 Q. And what dosage do you take of the Abilify?
 5 A. It's 5 milligrams.
 6 Q. How long have you been taking that medication?
 7 A. Again, since October, 2009.
 8 Q. And what is the purpose of the Abilify?
 9 A. It's a -- I'm not sure how to describe it other
 10 than to say it was a anti-depressant supplement booster
 11 to try and make the Zoloft work better.
 12 Q. Do you take each of those four medications
 13 every day?
 14 A. Yes.
 15 Q. Are there any other medications that are
 16 prescribed for you but that you are not taking?
 17 A. I have a Lunesta prescription that I use
 18 occasionally for sleep.
 19 Q. How often do you take that?
 20 A. Three or four times a month right now.
 21 Q. As far as you're aware, is there anything about
 22 the medications that you're on today that would
 23 prohibit you from understanding my questions?
 24 A. No.
 25 Q. What did you do to prepare for today's

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12

1 Q. I asked you earlier that -- if you were -- if
 2 you had given deposition testimony. I take it you've
 3 never given sworn testimony before?
 4 A. That's correct, I haven't.
 5 Q. Have you ever had any type of license or
 6 certification that's been suspended or revoked or
 7 canceled?
 8 A. No.
 9 Q. What types of organizations do you belong to?
 10 A. Could you be more specific, what kind of?
 11 Q. Do you belong to any kind of civic or social
 12 organizations?
 13 A. I belong to the Texas State Teachers
 14 Association, numerous charitable groups I'll send a
 15 check to every now and then, but...
 16 Q. Do you belong to a church?
 17 A. Yes.
 18 Q. Which church do you belong to?
 19 A. Shepherd of the Hills Lutheran.
 20 Q. How long have you attended that church?
 21 A. Since -- my daughter started school at that
 22 location.
 23 THE WITNESS: I apologize for the ums.
 24 A. 2001.
 25 Q. What sorts of things do you do for fun or

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13

1 recreation?

2 A. I enjoy reading, following current events,

3 bowling.

4 Q. Tell me about where you attended high school.

5 A. I attended high school at Bothell High School

6 for one year, I believe. That's a suburb of Seattle.

7 Then my father was in the Navy, was transferred to

8 Hawaii, and I finished my high school years at Radford

9 High School.

10 Q. Where is Radford High School located?

11 A. It's in Honolulu.

12 Q. What year did you graduate from high school in

13 Honolulu?

14 A. 1978.

15 Q. What did you do after you graduated from high

16 school?

17 A. I stayed there one year working and taking some

18 part-time courses at Leeward Community College.

19 Q. What sort -- did you have a particular major,

20 or were you just taking some courses at Leeward?

21 A. Just some general courses.

22 Q. And what did you do after that year?

23 A. I applied for and was accepted at Oklahoma

24 Christian College and began attending in 1979.

25 Q. What were you studying at Oklahoma Christian

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15

1 Q. What was your position there at the

2 JC Penney at Ingram Park Hall?

3 A. Hardware department, sales.

4 Q. Did you further your education after you moved

5 here to San Antonio?

6 A. Yes, I went back to school at UTSA and...

7 Q. At what point did you do that?

8 A. I believe it was 1983. I could be incorrect,

9 but I believe it's 1983.

10 Q. How long did you work at JC Penney?

11 A. Approximately one year.

12 Q. Why did you leave JC Penney?

13 A. I left JC Penney because they had changed the

14 schedule while I was off duty. I came in on the wrong

15 day, and then I was let go.

16 Q. You were terminated from your position?

17 A. Yes.

18 Q. While you were working for JC Penney, had you

19 received any sorts of reprimands or write-ups?

20 A. No.

21 Q. And they terminated you for this one event?

22 A. Yes.

23 Q. Once you were terminated by JC Penney, did you

24 go to work -- did you go to UTSA immediately, or did

25 you find another job?

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14

1 College?

2 A. That was social work.

3 Q. Where is Oklahoma Christian College located?

4 A. Oklahoma City.

5 Q. Did you receive a degree from Oklahoma

6 Christian College?

7 A. No.

8 Q. How long were you there?

9 A. Two years.

10 Q. After your two years -- were you working while

11 you were at Oklahoma Christian College?

12 A. Yes, I was.

13 Q. What sort of work were you doing?

14 A. Janitorial dormitory-type cleaning.

15 Q. After your two years at Oklahoma Christian

16 College, where did you go next?

17 A. I moved to San Antonio.

18 Q. What was the reason for your move to

19 San Antonio?

20 A. That would be -- I was intention -- intending

21 to take just a summer break but ended up working

22 full-time at JC Penney and getting married that year.

23 Q. Which JC Penney did you work at here in

24 San Antonio?

25 A. Ingram Park Hall.

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16

1 A. I'm having difficulty recalling what exact

2 order. I worked at Oshman's Sporting Goods there

3 across from North Star while I was at UTSA. Again,

4 approximately a year, maybe more than that.

5 Q. Were you terminated at Oshman's?

6 A. No. I resigned.

7 Q. What was the reason for your resignation?

8 A. I graduated from college and was ready to move

9 on.

10 Q. What was your degree in from UTSA?

11 A. Political science.

12 Q. When did you receive your degree?

13 A. 1985.

14 Q. What did you do after receiving your degree in

15 political science from UTSA?

16 A. I was hired by USAA that fall.

17 Q. And what was your function with them?

18 A. I was an auto adjuster.

19 Q. How long did you hold that position?

20 A. Until May or June of '87.

21 Q. And why did you leave your position as an auto

22 adjuster for USAA?

23 A. Our family decided to move to Seattle.

24 Q. What precipitated the decision to move to

25 Seattle?

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17

1 A. I had been born there, went to junior high
2 school there and had always liked it.
3 Q. Do you have family there?
4 A. No.
5 Q. And so was your daughter born by this time? I
6 take it --
7 A. No, she was not born until 1994.
8 Q. And so it was just you and your wife that moved
9 to Seattle?
10 A. Yes.
11 Q. What did you do once you got to Seattle?
12 A. I was employed by King County Blue Shield.
13 I think they've changed their name since.
14 Q. What was your function with them?
15 A. Subrogation specialist.
16 Q. How long did you hold that position?
17 A. Two years.
18 Q. Why did you leave your position as a
19 subrogation specialist for King County Blue Shield?
20 A. We decided to move back to Texas. The teaching
21 position for my wife was temporary. It
22 was -- she had a full-time contract. But it's the
23 nature of teaching up there that they have constant
24 reductions in force, and she wasn't guaranteed a
25 position the following year.

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19

1 with Northside. I'm having difficulty remembering
2 that. I was not a teacher yet. I went back to get my
3 teaching certificate.
4 Q. And so where did you do that?
5 A. At UTSA.
6 Q. And so you re-enrolled in UTSA approximately in
7 1989?
8 A. Uh-huh.
9 Q. Did you obtain your teaching certificate during
10 that time period based upon that entry into UTSA?
11 A. Yes.
12 Q. When did you receive your teaching certificate?
13 A. January of 1990.
14 Q. Were you employed while you were pursuing your
15 teaching certificate, or was your wife the sole
16 breadwinner at that point?
17 A. She was the sole breadwinner at that time.
18 Q. And once you received your teaching
19 certificate, did you seek employment?
20 A. Yes, I was hired by the school district that
21 had given me the student teaching experience, Southwest
22 School District.
23 Q. Whereabouts did you teach at Southwest?
24 A. My student teaching was at Southwest
25 Elementary, and my job was at Big Country Elementary.

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18

1 Q. She was teaching there in Seattle?
2 A. Yes.
3 Q. Public school, private school?
4 A. Public school.
5 Q. What grade was she teaching?
6 A. 7th and 8th grade.
7 Q. And so what year was it then that you moved
8 back to Texas?
9 A. 1989.
10 Q. And once you returned to Texas, did your wife
11 get another job?
12 A. Yes.
13 Q. For whom did she begin working?
14 A. Northside.
15 Q. Whereabouts did she teach for Northside?
16 A. I believe she was at Anson Jones.
17 Q. Do you remember what grade?
18 A. Again, I think it's math, 7th and 8th
19 combination.
20 Q. Did you obtain a position of employment once
21 you returned to Texas?
22 A. Yes, I did. Just a moment. I get confused
23 between our -- we have two moves. We have one back
24 from Seattle and another later on back from Portland.
25 We came back from Seattle. She got on

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20

1 Q. What was your position at Big Country?
2 A. 3rd grade teacher.
3 Q. I take it you were on a probationary contract?
4 A. Yes, I was, but I had been offered a permanent
5 contract by the end of that year, as part of a
6 reference letter that he wrote to me later on.
7 Q. Who wrote you the reference letter?
8 A. The principal, Clifford Cleborne.
9 Q. Do you know whether or not he's still the
10 principal at Big Country?
11 A. No, he's not.
12 Q. So how long did you teach then at Big Country?
13 A. From January, 1990 until May of 1992.
14 Q. Let me back up for a moment. Were you
15 terminated from your position at King County Blue
16 Shield?
17 A. No. I resigned.
18 Q. What was the purpose of your resignation?
19 A. To return to Texas.
20 Q. Were you ever reprimanded or disciplined while
21 you were there at --
22 A. No.
23 Q. Why did you leave Big Country in May of '92?
24 A. My mother and father had since retired, my dad
25 from the Navy, and had gone to McMinnville, Oregon,

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21

1 just south of Portland. And I wanted to move closer to
 2 them since no one else in the family was nearby.
 3 Q. Do you have brothers and sisters?
 4 A. Yes.
 5 Q. How many brothers?
 6 A. Two brothers.
 7 Q. Older or younger?
 8 A. Older.
 9 Q. And do you have any sisters?
 10 A. Two sisters.
 11 Q. And are they older or younger?
 12 A. Younger.
 13 Q. Once you moved to Portland then, did you seek
 14 employment there?
 15 A. Yes, I did.
 16 Q. Did you obtain employment?
 17 A. Only substitute teaching.
 18 Q. And for whom did you substitute teach in
 19 Portland?
 20 A. Oregon City School District, North Clackamas
 21 School District. Those were my main -- I believe those
 22 were the only two districts that I aided.
 23 Q. When you say you were doing substitute
 24 teaching, approximately how often were you called to
 25 teach?

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23

1 Q. Did you seek employment once you returned to
 2 Texas then?
 3 A. Yes.
 4 Q. Did you obtain employment?
 5 A. Yes.
 6 Q. Where?
 7 A. Pleasanton School District.
 8 Q. What position did you hold with the Pleasanton
 9 School District?
 10 A. That was 3rd grade.
 11 Q. Was that on a probationary contract?
 12 A. Yes.
 13 Q. Does Pleasanton only have one elementary
 14 school?
 15 A. No. They have a unique system. They have K, 1
 16 and 2 at the primary, then they have elementary 3, 4
 17 and 5, which is where I was.
 18 Q. Which elementary school was that?
 19 A. I was at Pleasanton Elementary.
 20 Q. Was your wife working once you returned to
 21 Texas in '93?
 22 A. Yes, she was hired as well by Pleasanton.
 23 Q. What position did she hold?
 24 A. 5th grade contact mastery teacher.
 25 Q. Was that at the same school, Pleasanton

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22

1 A. Three to four days a week.
 2 Q. How long did you continue as a substitute
 3 teacher for those school districts?
 4 A. Until 1993, spring of '93.
 5 Q. Why did you decide to do something different in
 6 the spring of '93?
 7 A. The education system in Oregon is broken and
 8 they had passed a tax limitation and was laying off
 9 teachers.
 10 Q. Was your wife working during this time in
 11 Oregon?
 12 A. Yes.
 13 Q. And did she have a permanent position?
 14 A. Again, she had a one -- just a one-year
 15 contract.
 16 Q. Do you remember for which school district she
 17 worked during that year?
 18 A. Oregon City.
 19 Q. Once you decided to leave the Oregon school
 20 districts, what did you do next?
 21 A. We returned to Texas.
 22 Q. What year was that?
 23 A. 1993, summer.
 24 Q. Was that back to San Antonio?
 25 A. Yes.

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24

1 Elementary?
 2 A. Yes.
 3 Q. How long were you at Pleasanton Elementary?
 4 A. Until May of 2000.
 5 Q. Why did you leave Pleasanton in May of 2000?
 6 A. Our daughter had been born in '94, and my wife
 7 had been able to stay home with her for six years. It
 8 was time to go back to San Antonio just to find a nicer
 9 home, be closer to her mother. Her mother had breast
 10 cancer at the time, so she wanted to be closer rather
 11 than an hour away.
 12 Q. So from 1993 to 2000 while you were working for
 13 Pleasanton, you actually lived in Pleasanton?
 14 A. Yes.
 15 Q. So you moved to San Antonio then in May of
 16 2000?
 17 A. Yes.
 18 Q. Did you seek employment here in San Antonio
 19 then?
 20 A. Yes.
 21 Q. And when did you obtain employment next?
 22 A. That would be that fall in August with
 23 Northside.
 24 Q. Whereabouts?
 25 A. That would be at Cody Elementary.

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25

1 Q. Were you on a permanent contract in Pleasanton
2 by May of 2000, or term contract?

3 A. Yes.

4 Q. And were you let go there?

5 A. I resigned.

6 Q. And was that for purposes of returning to San
7 Antonio?

8 A. Yes.

9 Q. Were you ever disciplined, reprimanded or
10 receive any type of write-ups while you were at
11 Pleasanton?

12 A. No. Only positive.

13 Q. Once you began working for Cody Elementary,
14 then how long did you work there?

15 A. I was there one year, and then due to staffing,
16 I was moved over to Galm Elementary the following year.
17 That would be in 199 -- I can't recall. I'd have to go
18 back and look at what I just said about Cody
19 Elementary, what year that was.

20 Q. You told me you began work at Cody Elementary
21 in August of 2000.

22 A. That's right. Okay. So 2000, 2001 I was at
23 Cody. 2001, 2002 I was at Galm Elementary.

24 Q. Was there a reason why you were transferred
25 from Cody to Galm?

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27

1 in May of 2007?

2 A. May of 2007 I had decided to move to Northside
3 to get a fresh start.

4 Q. When you say "a fresh start," a fresh start
5 from what?

6 A. I had suffered depressive -- major depressive
7 episodes.

8 Q. When did you first experience major depressive
9 episodes?

10 A. In October of 2005.

11 Q. What, if anything, served as a triggering event
12 for those major depressive episodes?

13 A. I can't really pin it on anything in
14 particular. There was -- I remember reading an
15 editorial about the Iraq war and becoming tearful and
16 my wife saying, "What's the matter," and I just said I
17 was upset about it. And she said, "You know depression
18 runs in your family. Your mother has it. Your brother
19 has it. Don't you think you should go see a doctor?"

20 Q. So in May of 2005, you said you began
21 experiencing major depressive episodes. What did that
22 look like?

23 A. Lots of -- at home it would be lots of crying,
24 loss of sleep, in addition to lots of anxiety. Anxiety
25 being not just I'm worried about such and such but just

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26

1 A. They had staffing redistricting with students
2 coming in or something like that. There were a number
3 of us that had to leave or pick our campus.

4 Q. Were you at Galm more than one year?

5 A. No.

6 Q. Why did you leave Galm in 2002?

7 A. I missed my old employer at Pleasanton.

8 Q. Did you go back to work for them?

9 A. Yes.

10 Q. Was that again at Pleasanton Elementary?

11 A. It had since changed into Pleasanton
12 Intermediate.

13 Q. How long were you employed at Pleasanton
14 Intermediate then?

15 A. Until 2007. Until May of 2007.

16 Q. What was it that you preferred about Pleasanton
17 compared to working for Northside?

18 A. The pace was more relaxed. The students were
19 more -- how should we say? There's just a difference
20 between city and country kids.

21 Q. Were you commuting back and forth between San
22 Antonio and Pleasanton?

23 A. Yes. And had a number of friends that worked
24 there, so...

25 Q. And then why did you decide to leave Pleasanton

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28

1 irrational anxiety. Just being uncomfortable anywhere
2 and not being able to calm myself down.

3 Q. You indicated that family members had a similar
4 type of experience. Were they -- I take it they were
5 diagnosed before you were?

6 A. Yes.

7 Q. And do you have family members who are treated
8 for major depressive episodes?

9 A. Yes.

10 Q. When did you first seek some sort of
11 intervention either from psychologists or psychiatrists
12 with respect to these major depressive episodes?

13 A. I believe it was August or September of 2005.

14 Q. And to whom did you go to seek some sort of
15 intervention?

16 A. Our family doctor, Sybil Morgan.

17 Q. What did Dr. Morgan do for you?

18 A. She said, "You have major depressive disorder
19 and anxiety," and she put me on -- it's starts with an
20 L. I'm trying to recall the anti-depressant. It's
21 starts with an L, but I'm coming up short.

22 Q. Lexapro?

23 A. Yes, that's it.

24 Q. And was it effective in alleviating the
25 symptoms?

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29

1 A. No.
 2 Q. Did you seek any type of counseling in
 3 connection with the depressive episodes?
 4 A. Yes, I immediately began counseling with Javier
 5 Villanueva. He's a psych...
 6 Q. How often did you see Javier Villanueva for
 7 counseling?
 8 A. Once a week.
 9 Q. Is Mr. Villanueva here in San Antonio?
 10 A. Yes.
 11 Q. How long did you continue that counseling
 12 therapy?
 13 A. That continued into 2000 -- I want to say 2009.
 14 2009. It wasn't weekly at that point.
 15 Q. How often was it -- how long was -- how often
 16 -- excuse me. For how long were you seeing him on a
 17 weekly basis beginning in 2005 and ending approximately
 18 when?
 19 A. The summer of 2006.
 20 Q. For what reason did you cease seeing
 21 Mr. Villanueva on a weekly basis?
 22 A. It was upon his recommendation that I only
 23 needed to come once a month.
 24 Q. And you indicated that the Lexapro intervention
 25 was not successful. Did you consult either with Dr.

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31

1 that present any type of obstacle for your work at
 2 Pleasanton Intermediate School?
 3 A. Yes.
 4 Q. What sorts of obstacles did it present?
 5 A. I had to focus more on teaching the students
 6 than I had previously. Paperwork became more
 7 difficult. I remember having just one light on in the
 8 classroom just to try and keep things relaxed. I was
 9 able to continue teaching the students with an aide and
 10 assistance of my principal.
 11 Q. Who was your principal?
 12 A. Sandy Coward.
 13 Q. Did you have to ask the folks at Pleasanton
 14 Independent School District for any sort of
 15 accommodation with respect to your issues of major
 16 depressive disorder?
 17 A. I did not ask specifically for them, but I was
 18 given the ability to go into the principal's office and
 19 talk with her at will. It was a very understanding
 20 situation, and they let me do my job.
 21 Q. Was the ability to go in and visit with your
 22 principal at will effective in helping you manage the
 23 stress that you were experiencing?
 24 A. Yes.
 25 Q. And then you left Pleasanton in --

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30

1 Morgan or with someone else to seek any sort of
 2 alternative?
 3 A. Yes.
 4 Q. With whom did you consult with?
 5 A. I can't remember the name of the doctor, but it
 6 was at Alamo Mental Health Clinic. There were two or
 7 three doctors there that whoever was open they saw you.
 8 Q. Was that a recommendation made by
 9 Dr. Morgan, or did you just seek some independent
 10 advice with respect to the issue?
 11 A. It was by her recommendation.
 12 Q. Did the folks at Alamo Mental Health put you on
 13 a different regimen of medication?
 14 A. Yes.
 15 Q. What did they recommend?
 16 A. I went to Cymbalta. And I had been on
 17 Klonopin. I failed to mention that earlier. I
 18 continued on Klonopin. But I was then on Cymbalta.
 19 Q. Was the Klonopin recommended by Dr. Morgan?
 20 A. I don't remember. I believe so, but I don't
 21 remember.
 22 Q. How did the Cymbalta work? Was it effective?
 23 A. It was a support mechanism.
 24 Q. During this time you indicate that you're
 25 having major depressive episodes beginning in 2005. Did

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32

1 Did you see anyone after Alamo Mental
 2 Health before you came back to Northside?
 3 A. Yes, but I cannot remember her name. I went --
 4 I went to another psychiatrist, and she gave me
 5 Effexor. I only went to her one time because the
 6 Effexor created high blood pressure and increased my
 7 anxiety.
 8 Q. And you don't remember her name?
 9 A. No. She was off of Vance Jackson, I believe.
 10 Q. How long were you on the Effexor?
 11 A. Probably three months.
 12 Q. Was that substituted for the Cymbalta?
 13 A. Yes.
 14 Q. And when you realized that it was increasing
 15 your blood pressure and your anxiety, what did you do
 16 next?
 17 A. I'm having trouble recalling, but I believe I
 18 went back to Alamo Mental Health Clinic.
 19 Q. What did they prescribe for you when you
 20 returned?
 21 A. I was on Cymbalta again.
 22 Q. During this time period from the time that the
 23 major depressive episodes began in 2005 -- let me back
 24 up. Before 2005 had you ever experienced anything like
 25 this?

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33

1 A. No.

2 Q. To the best of your recollection, this

3 basically started when you read -- or you first noticed

4 it when you read an article about the Iraq war?

5 A. Yes, that was the first noticeable time.

6 Q. How often were you having some sort of what you

7 would describe as a depressive episode beginning in

8 2005?

9 A. It was -- when I say "episode," I'm referring

10 to a time frame longer than just a short period. So I

11 would say it lasted to 2006 to 2000 -- I don't

12 remember. But it was a serious black hole of

13 depression.

14 Q. Were you still able to attend your job

15 regularly at Pleasanton Intermediate?

16 A. Yes. However, there were times that I went

17 into work late or I used my sick leave as much as

18 possible.

19 Q. How often do you estimate that you missed work

20 beginning in 2005 while you were employed by Pleasanton

21 for that next two-year period?

22 A. Possibly 10 to 15 days.

23 Q. When you returned to San Antonio in 2007, did

24 you go back to work for Northside?

25 A. Yes.

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35

1 A. I self-checked myself into partial

2 hospitalization at Laurel Ridge and was given Zoloft

3 and Abilify.

4 Q. Were you still seeing the folks over at Alamo

5 Mental Health on any kind of regular basis or at all

6 during the period from October, 2007 to October of

7 2009?

8 A. Some -- I cannot remember when I first began

9 seeing Dr. Jolene Moore, psychiatrist. I

10 was -- had gotten fed up with Alamo Mental Health.

11 Q. When you say you had gotten fed up with them,

12 why was that?

13 A. They would see you for five minutes and refill

14 your prescription. They were not interested in talking

15 with you.

16 Q. Who recommended Dr. Jolene Moore to you?

17 A. Javier Villanueva.

18 Q. When did you cease counseling therapy with Mr.

19 Villanueva in 2009?

20 A. I believe I saw him until January, 2010.

21 I'm not sure.

22 Q. Why did you cease counseling therapy with him

23 at that point then?

24 A. I had learned of a Crossroads Christian

25 Counseling and wanted a different perspective on

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34

1 Q. Where were you hired to work for Northside in

2 -- was it August of 2007?

3 A. I was hired in October.

4 Q. In October.

5 A. For Michael Elementary.

6 Q. How was your state of mind at the time that you

7 returned to Northside in October, 2007? Were you still

8 experiencing the depressive episodes, or was your

9 treatment effective in reducing the effects of that?

10 A. The treatment was effective in reducing the

11 effects enough so that I felt like I could go back to

12 work and try and get a fresh start without any worries

13 about people seeing me upset and -- as they had in

14 Pleasanton.

15 Q. Were you back on Cymbalta at the time that you

16 returned to Northside?

17 A. I'm pretty sure it was Cymbalta and the

18 Klonopin.

19 Q. At what point was the Cymbalta eliminated?

20 A. That would be in October of 2009.

21 Q. So from October, 2007 to October -- when you

22 went to work for Michael Elementary, to October of

23 2009, you were on Cymbalta?

24 A. Yes.

25 Q. What was substituted in October of 2009?

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36

1 therapy.

2 Q. At the time you checked yourself into partial

3 hospitalization at Laurel Ridge, were you still seeing

4 Mr. Villanueva for therapy?

5 A. Yes.

6 Q. Did you talk to him about your intent to do

7 that, to check yourself into partial hospitalization

8 before you did so?

9 A. Yes.

10 Q. And what was his recommendation?

11 A. He suggested that that would be a good idea,

12 that I need to attack it in another form, you know,

13 have someone else take a look at my problem.

14 He recommended either Methodist or Laurel Ridge.

15 Q. Was he the one that suggested that you check

16 into a partial hospitalization, or are you the one that

17 came up with that idea?

18 A. He had listed it as one of the options, and we

19 had worked through therapy. We had worked through

20 medication. And when an event occurred at school, I

21 thought that those other options had been exhausted and

22 I needed to try something different.

23 Q. What was the event that occurred at school?

24 A. I was -- I believe I was counseled and possibly

25 reprimanded in October, 2009 by the vice-principal.

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37

1 Q. Which vice-principal was that?
 2 A. Evelyn Massiatte.
 3 Q. What was the reason for Ms. Massiatte
 4 counseling you in October of 2009?
 5 A. Not turning in my lesson plans.
 6 Q. Is it the case that her counseling with you
 7 about not turning in lesson plans led you to the state
 8 of mind that you felt like you required partial
 9 hospitalization at Laurel Ridge treatment center?
 10 A. Yes. As I was walking back from that meeting,
 11 I teared up and had the familiar depressive feelings
 12 and I told myself, "I'm not doing this again. I'm
 13 going to get help."
 14 Q. Had you teared up and had this kind of reaction
 15 previously at any of your places of employment?
 16 A. Yes.
 17 Q. I think you mentioned that you had teared up
 18 when you were working at Pleasanton. Is that correct?
 19 A. Yes.
 20 Q. Did you have that experience previously when
 21 you were at Cody or at Galm?
 22 A. No.
 23 Q. What did you do when you teared -- well, let me
 24 see, first of all, how often would you estimate that
 25 occurred while you were employed by Pleasanton, or how

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39

1 continued to have that same issue that you would tear
 2 up on a daily basis at Michael Elementary?
 3 A. No, it wasn't a daily basis. It was -- I would
 4 frequently go to the restroom just to gather myself.
 5 It was not as severe as it was in Pleasanton.
 6 Q. In Pleasanton, did they ever counsel with you
 7 or criticize you for anything -- issues relating to
 8 your job performance?
 9 A. No. I had high recommendations.
 10 Q. So prior to Ms. Massiatte counseling you about
 11 grades in -- or lesson -- was it grades or lesson
 12 plans, do you recall, in October, 2009?
 13 A. I do not recall. It was either grades or
 14 lesson plans.
 15 Q. Prior to her counseling with you in October of
 16 2009, had anyone ever criticized your performance with
 17 respect to employment issues?
 18 A. I had talked with my team members about the
 19 lesson plans because they -- I had turned them in late.
 20 And I had talked to them, but there was no official
 21 reprimand until October with Ms. Massiatte. There was
 22 no reprimands in Pleasanton whatsoever.
 23 Q. Were your teammates critical of the fact that
 24 you hadn't timely submitted your lesson plans?
 25 A. I only knew that one of them had gone to the

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38

1 many times?
 2 A. I either teared up or had to fight off the
 3 symptoms daily.
 4 Q. What would precipitate that?
 5 A. Nothing.
 6 Q. So on a daily basis you were tearing up.
 7 And how did you recover from that experience? I mean,
 8 did you leave the classroom?
 9 A. While I was teaching the students, I focused
 10 entirely on the students, and as long as I was focused
 11 on that, I never teared up in front of the students.
 12 If --
 13 Q. What -- go ahead.
 14 A. It would always be after teaching. I would
 15 close the door or visit the restroom and just gather
 16 myself.
 17 Q. Did you sometimes go to your principal's office
 18 to confer with her when you were --
 19 A. Yes.
 20 Q. And what, if anything, would precipitate you
 21 tearing up and having this reaction?
 22 A. A sense of being overwhelmed, not understanding
 23 why I had the depression.
 24 Q. When Ms. Massiatte counseled you in October of
 25 2009, had you -- prior to that time had you also

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40

1 vice-principal to talk about that.
 2 Q. Who was that?
 3 A. Her name was Stacy, but I can't remember her
 4 last name. I don't believe she's still there.
 5 Q. It's true, isn't it, Mr. Carter, that your job
 6 description for your position at Michael Elementary
 7 indicates that you need to be able to maintain
 8 emotional control under stress?
 9 A. That's true.
 10 Q. And were you aware of that prior to accepting
 11 the position at Michael Elementary?
 12 A. Yes.
 13 Q. Based upon your history beginning in 2005 with
 14 Pleasanton Independent School District, did you believe
 15 that you were capable of doing that?
 16 A. Yes.
 17 Q. When you were counseled then by
 18 Ms. Massiatte in October of 2009, how long was it
 19 before you decided to check yourself into partial
 20 hospitalization at Laurel Ridge?
 21 A. I don't have the dates in front of me, but I
 22 believe it was the following week. I spent some days
 23 -- I took sick leave immediately, and I spent some days
 24 with Dr. Moore trying to figure out what to do. And
 25 then I went into the partial. I believe that was

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41

1 within a week.

2 Q. And what did the partial hospitalization look
3 like? Were you actually a resident there, or did you
4 spend -- did you spend the entire day there, or how did
5 that work?

6 A. I would go in at 8 a.m., maybe 9. I can't
7 remember. And I would stay until 3, and then I'd go
8 home.

9 Q. What happened during that time period?
10 What did you do?

11 A. Nurses would talk with me and make me feel
12 comfortable there. The psychiatrist, Dr. Salinas,
13 changed my prescriptions. I was in group therapy,
14 music therapy. I watched videos about depression,
15 which I already knew about. I can't think of anything
16 else.

17 Q. What did you do when you left each day?

18 A. I would just go home.

19 Q. How long did that partial hospitalization at
20 Laurel Ridge last?

21 A. It was ten days. Or two weeks. I can't
22 remember if it was ten days or two weeks.

23 Q. And during that period of time, you were on
24 leave from the school district?

25 A. Yes.

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43

1 Ms. Massiatte counseled with you about the grade issue,
2 is it fair to say that your fourth grade reading
3 release test results were approximately -- had
4 approximately only a 50 percent passing rate for your
5 class?

6 A. This is in October of 2000 --

7 Q. '9.

8 A. -- '9?

9 Yes, that occurred, but I explained to
10 Ms. Shaw the reason for that.

11 Q. What was your understanding as to the reason
12 that your passing rate was only 50 percent on the
13 reading test?

14 A. The other teachers and I previously gave the
15 students multiple attempts at the test, and I told Ms.
16 Shaw I wasn't going to do that anymore.

17 Q. So you gave your students only one attempt at
18 the test?

19 A. Yes. I wanted a more realistic picture so that
20 there would be no surprises when they took the TAKS
21 test.

22 Q. Besides counseling with you in October of 2009,
23 isn't it true that Ms. Massiatte gave you a memorandum
24 on October 30th that indicated that she was concerned
25 about your turning in lesson plans on time?

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42

1 Q. Prior to that, in 2008 you had received an
2 evaluation from Ms. Shaw that rated you below
3 expectations in some areas, is that correct, in October
4 of 2008?

5 A. I would have to see the paperwork. I -- I
6 could be mistaken, but I don't believe that Ms. Shaw
7 ever did an official appraisal on me from the
8 classroom.

9 Q. Do you recall whether or not she might have
10 evaluated you and indicated that you had problems with
11 compliance with time lines?

12 MR. PONCIO: Object, calls for speculation.

13 Q. (By Mr. Wood) You may answer.

14 A. The question one more time.

15 Q. Do you recall whether or not she had rated you
16 below expectations with respect to your compliance with
17 time lines?

18 A. I don't remember. I know that was part of the
19 problem at some point, but I don't know specifically
20 that date.

21 Q. You do recall that you received more than one
22 evaluation that contained items that rated you below
23 expectations?

24 A. Yes.

25 Q. In October of 2009, about the time that

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44

1 A. I would have to see the paperwork, but that
2 sounds accurate.

3 Q. Did she offer you help with respect to any
4 assistance you might need?

5 A. She said that I could go to Melissa Ramon, my
6 fourth grade team leader, for additional help.

7 Q. And you said you thought you were at Laurel
8 Ridge in partial hospitalization for about two weeks.
9 You were on leave for approximately four weeks. Is
10 that correct?

11 A. I believe so, yes. I can't -- I believe the
12 issues came in October, and toward the end of October I
13 went into Laurel Ridge for a couple of weeks and then
14 was on medical leave on out.

15 Q. So following your hospitalization, did you
16 remain at home on medical leave?

17 A. Yes.

18 Q. And that would have been for approximately two
19 weeks?

20 A. No. I was out longer than that.

21 Q. Did someone recommend that you remain on
22 medical leave rather than returning to work?

23 A. The therapist that I had at Laurel Ridge and my
24 psychiatrist, Dr. Salinas, said you would be walking
25 back into a nasty situation that would precipitate or

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45

1 cause more problems.

2 Q. And that was just based upon the fact that Ms.
3 Massiatte had counseled you about the need to turn in
4 your lesson plans on a timely basis?

5 A. No. It was based on the attitude of
6 Ms. Shaw and Ms. Massiatte, the trouble I was having
7 handling the job with my symptoms.

8 Q. Besides this counseling session in which Ms.
9 Massiatte was critical about you turning in lesson
10 plans, what else -- what other issues with
11 Ms. Massiatte or Ms. Shaw were presenting problems for
12 you at that time?

13 A. I knew I was having trouble keeping up with the
14 workload and knew I could not go to them for emotional
15 support.

16 Q. When you say you knew you could not go to them
17 for emotional support, what do you base that on?

18 A. I felt that I was there to do a job and there
19 was -- I felt like I was there to do a job and that was
20 what was expected of me, no exceptions.
21 That was just based on attitude on -- that I perceived
22 from her in conference meetings going over test
23 results.

24 Q. We talked about your reading test results being
25 only 50 percent. Did somebody conference with you

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46

1 about that and explain to you that that was not a
2 satisfactory passing rate?

3 A. Yes.

4 Q. Who counseled with you about that?

5 A. Lily Shaw counseled with me and each of the
6 teachers about our results.

7 Q. Was she critical of other teachers' results as
8 well as of your results?

9 A. I don't know that. I wasn't in the room with
10 her.

11 Q. Do you know whether or not there were other
12 teachers who had lower scores with respect to the
13 reading tests than those demonstrated by your class?

14 A. I don't know if they were higher or lower.
15 I did not know what their results were.

16 Q. When Ms. Shaw counseled with you about your
17 reading scores, what was your reaction to that?

18 A. My reaction was that those scores weren't going
19 to cut it and that they needed to be fixed or corrected
20 -- I mean, improved.

21 Q. Was that your own internal feeling, or was that
22 something that Ms. Shaw indicated to you and you
23 disagreed with?

24 A. It was my own internal feeling and then she
25 agreed with it.

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47

1 Q. Was Ms. Shaw critical or, excuse me, was she
2 harsh to you when she discussed your reading scores
3 with you?

4 A. Harsh? No.

5 Q. Was she unfair to you when she discussed those
6 scores with you?

7 A. No.

8 Q. Now, there were also some writing scores that
9 were given approximately at that time. Do you recall
10 that your class had a 39 percent passing rate on the
11 writing scores?

12 A. I'd have to see the date of that test, if it
13 was possible that that writing test was given after I
14 was gone.

15 Q. Do you recall whether or not the writing scores
16 for your class were the lowest of the scores given in
17 the fourth grade?

18 A. No, I was not aware of that. And again, I
19 don't know if that test was given while I was actually
20 on campus or not.

21 Q. Did Ms. Shaw ever counsel with you about your
22 writing scores, to your recollection?

23 A. Not at all. We had exemplary writing on the
24 TAKS test in the spring.

25 Q. So, so far I understand that Ms. Shaw counseled

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48

1 with you about your reading scores, but you didn't feel
2 like she was harsh or unfair to you. And Ms. Massiatte
3 counseled with you about the need to timely turn lesson
4 plans in. What other experiences were causing you
5 problems or causing you some sort of emotional distress
6 with respect to your employment at Michael in this time
7 period of October and November of 2009?

8 A. I was unable to keep up with the paperwork.
9 That was me and my standards, I wasn't keeping up with
10 the paperwork. I was able to have my lessons prepared
11 and be on for the kids. But the paperwork and test
12 results and meetings and lack of time to work on it, I
13 felt overwhelmed.

14 Q. And so was the stress that you were suffering
15 from, was that something that was imposed by your own
16 conscience, or was it something that was imposed by
17 something that either Ms. Massiatte or
18 Ms. Shaw did?

19 A. It was a combination. I believe it was myself
20 and the standards I had had and feeling like I wasn't
21 keeping up, and then to have that re-affirmed by my
22 supervisors just added to it, added to the stress.

23 Q. What conferences, other than the one that Ms.
24 Shaw had with you about your reading scores and the one
25 that Ms. Massiatte had with you about turning in lesson

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49

1 plans, what other conferences did you have with those
 2 two that might have imposed any additional stress?
 3 A. What time frame are you asking about?
 4 Q. October and November of 2009.
 5 A. They pulled me in for a meeting. I can't
 6 recall the reason. But I left in tears. I can't
 7 recall the meeting.
 8 Q. Was that prior to your hospitalization at
 9 Laurel Ridge?
 10 A. I believe so.
 11 Q. Did you believe, based upon what was going on
 12 at that time, that you were maintaining emotional
 13 control under stress?
 14 A. In front of the students I was.
 15 Q. Were you breaking down into tears during the
 16 school day?
 17 A. Yes.
 18 Q. And was that for the entire school day, or were
 19 there times that you broke down during the day?
 20 A. Just temporary moments I allowed myself to go
 21 to the restroom and gather my thoughts and emotions and
 22 get back to work.
 23 Q. So during the time period after you left Laurel
 24 Ridge treatment center and before you returned to work
 25 at Michael Elementary, I take it you were staying at

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51

1 they feel like they had done as much as needed to be
 2 done in order to discharge you?
 3 A. I have no way of knowing that. Insurance only
 4 paid for ten days.
 5 Q. Is it your understanding that your stay there
 6 was limited just by the amount that the insurance would
 7 pay?
 8 A. Yes, because I wasn't getting income, so yeah.
 9 Q. When did you return to work at Michael?
 10 A. In January of 2010.
 11 Q. Did you return immediately at the start of the
 12 new semester?
 13 A. Yes.
 14 Q. What was your state of mind like at that point?
 15 Did you feel like you had recovered from the episode
 16 that led you to refer yourself for partial
 17 hospitalization?
 18 A. Yes, I felt like I could start again, new year,
 19 and I felt that -- I wanted to believe what one of the
 20 therapists had said. She had told me, "You've just
 21 been written up once. Big deal. Get back to work when
 22 you can and just don't let that one reprimand upset
 23 you." So I went back to work.
 24 Q. Were you aware of other employees who had
 25 received a reprimand?

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50

1 home during the day?
 2 A. I was staying at home and continuing to see Dr.
 3 Villanueva and Dr. Moore.
 4 Q. How often were you seeing Dr. Villanueva during
 5 that time period?
 6 A. I don't remember. I'd have to look at the
 7 printout of how much I saw him then. And I -- and I
 8 don't remember how often. It was at least once a
 9 month.
 10 Q. And what about Dr. Moore, how often were you
 11 seeing her?
 12 A. That was a transition time between
 13 Dr. Salinas and Dr. Moore. I saw both of them, I
 14 believe -- I believe Dr. Salinas was weekly. I can't
 15 remember.
 16 Q. What did you do when you would see
 17 Dr. Salinas when you weren't receiving counseling from
 18 her.
 19 A. I received -- she checked on my medications to
 20 see if they were helping. She checked on weight and
 21 blood pressure. We talked about work, talked about the
 22 treatment at Laurel Ridge, how I was feeling. It was
 23 not just a five-minute meeting as previous
 24 psychiatrists.
 25 Q. When you were discharged from Laurel Ridge, did

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52

1 A. No. I have no way of knowing that.
 2 Q. Had you ever had discussions with any of your
 3 colleagues as to whether or not any of them had ever
 4 received reprimands?
 5 A. No.
 6 Q. Did you think that a single reprimand was
 7 something that was significant with respect to your
 8 future employment with the district?
 9 A. Yes.
 10 Q. Why did you believe that?
 11 A. It had been the first time in my 20 years of
 12 teaching that I had ever been reprimand.
 13 Q. Did you feel like the reprimand was warranted
 14 based upon the fact that you had not timely submitted
 15 lesson plans?
 16 A. That's a decision the supervisor has to make.
 17 Previously at my other position, I would have been
 18 talked to and there would have been no reprimand.
 19 Q. Well, you talked about your own personal code
 20 of the way things ought to be done. Did you feel like
 21 it was acceptable for you not to turn in your lesson
 22 plans on a timely manner?
 23 A. No, they needed to be turned in on time.
 24 Q. And if you had had a subordinate who you were
 25 supervising, would you have likewise indicated to that

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53

1 employee if they needed to turn in their lesson plans
 2 on a timely basis?
 3 A. Yes.
 4 Q. When you returned in January of 2010, I know
 5 there was an additional issue about your final grades
 6 not being submitted timely. Do you recall that?
 7 A. Certainly.
 8 Q. And you met, again, with Ms. Hassiatte about
 9 that?
 10 A. Yes, I did.
 11 Q. Did she tell you that she did not see any
 12 grades that had been posted since December for your
 13 class?
 14 A. Yes, she did.
 15 Q. Are you aware that there were other employees
 16 with whom Ms. Hassiatte also met with respect to the
 17 issue of late grades or grades not submitted in a time
 18 --
 19 A. I have no way of knowing that.
 20 Q. Did she give you a reprimand in January that
 21 indicated to you that your failure to comply with the
 22 requirement to post grades in a timely manner would be
 23 reflected in a negative manner on your evaluation?
 24 A. Yes, she did.
 25 Q. Did you believe that was warranted?

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55

1 Q. And she said that your mood was severely
 2 depressed with significant cognitive effects including
 3 affecting memory and concentration?
 4 A. Yes.
 5 Q. And she also indicated that you may be unable
 6 -- that you will be unable to perform some of the
 7 essential functions of the job. Is that correct?
 8 A. Yes.
 9 Q. In fact, she recommended that you not return to
 10 teaching, did she not?
 11 A. She recommended that I not return that year.
 12 Q. And based upon that recommendation, did you go
 13 -- again go on leave, or did you --
 14 A. I was on leave until the end of the school
 15 year, yes.
 16 Q. You met with Mark Hardison in March of 2010,
 17 did you not?
 18 A. In March? Yes.
 19 Q. Did you tell Mr. Hardison that when you
 20 returned to work that you would like to be placed in a
 21 lower grade level because of the stress?
 22 A. I know I had asked for a different school for a
 23 fresh start. I can't recall the lower grade level
 24 request.
 25 Q. And then in April you filed a charge of

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54

1 A. No.
 2 Q. Why not?
 3 A. I was written up for not having grades in
 4 December, and I wasn't even on campus.
 5 Q. Once you returned, though, with grades being
 6 due on January 15th, was it your understanding that you
 7 were responsible for that, whether you had been on
 8 campus in December or not?
 9 A. That was not my understanding. It was my
 10 understanding that they would take care of the grades,
 11 or the substitute would, while I was gone.
 12 Q. So you felt like this was something that was
 13 not your responsibility?
 14 A. That's correct.
 15 Q. Now, during -- in February you went in for
 16 medical treatment again. Is that correct?
 17 A. This is 2010?
 18 Q. Yes. With Ms. Salinas or Dr. Salinas.
 19 A. Yes, I did.
 20 Q. And she filled out a Medical Certification of
 21 Health Care Provider. Is that correct?
 22 A. Yes.
 23 Q. And she indicated in that form that she felt
 24 like you were incapacitated. Is that accurate?
 25 A. That's accurate.

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56

1 discrimination with the EEOC, did you not?
 2 A. Yes.
 3 Q. Why did you do that?
 4 A. While I was on medical leave attempting to get
 5 better from my medical condition, Dr. Folks sent me a
 6 letter saying that my contract would not be renewed,
 7 and I felt that was discriminatory.
 8 Q. In fact, what Dr. Folks informed you was that
 9 he was not going to recommend an extension.
 10 Isn't that accurate?
 11 A. It's accurate, but it's a verbal jujitsu about,
 12 you know, basically you're done here.
 13 Q. Well, in fact, after Dr. Folks' recommended
 14 action, you still had one year remaining on your
 15 contract, did you not?
 16 A. I did. But it would be terminated at that end.
 17 Q. And how do you know that it would be terminated
 18 at the end of that second year? That's a presumption
 19 --
 20 A. Because my principal recommended that I not be
 21 renewed, and I was going to go back to that same
 22 principal, without any accommodations.
 23 Q. She recommended that you not be extended at
 24 that time. Isn't that accurate?
 25 A. Extended is accurate. But again, it's once

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57

1 that's on your record as a teacher, it is a black mark,
 2 because another school district will ask, "Have you
 3 ever had your certificate" -- not certificate, "but
 4 your contract non-renewed or," and there's another
 5 sentence. I can't remember it. Southwest uses it to
 6 block out candidates such as myself.
 7 Q. I realize this is somewhat of a technical and
 8 legal area, but it is important that we get your
 9 understanding. Isn't it your understanding that after
 10 Dr. Folks communicated with you in 2010, that you would
 11 still have a contract of employment for the 2010-2011
 12 school year?
 13 A. Yes, I knew that.
 14 Q. And so you filed your charge of discrimination
 15 with the EEOC in April of 2010. What was your
 16 complaint?
 17 A. I felt I had been discriminated against because
 18 my contract was not being redone based on my depressive
 19 symptoms. The depressive symptoms caused problems for
 20 me in the classroom in keeping up, and I was under
 21 constant pressure. I was written up twice inaccurately
 22 and unfairly in those -- in January.
 23 And I felt that the school district was trying to get
 24 rid of me.
 25 Q. Let me take those a piece at a time. As far as

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59

1 A. Yes.
 2 Q. So the reprimand then that you received in
 3 January -- on January 14th from Ms. Massiatto about
 4 your failure to post grades, did you feel like that was
 5 discriminatory?
 6 A. Yes. They were penalizing me for something
 7 that I wasn't there to do.
 8 Q. So you believe that it was unfair because of
 9 the fact that you had not been there and you shouldn't
 10 be responsible?
 11 A. I agree with that.
 12 Q. And there wasn't anything that -- about the
 13 reprimand from Ms. Massiatto that was based upon --
 14 that you believe was based upon your disability. Is
 15 that fair?
 16 A. No. I believe I was -- I would have to see the
 17 paperwork in front of me. But I believe I was given
 18 two reprimands, both of them were inaccurate, and I --
 19 and as noted in my reply, inaccurate and unfair.
 20 Again, they penalized me for something that I wasn't
 21 there to do. And then I was criticized or reprimanded
 22 for my grades. And my grades have always been done on
 23 time and approved by Ms. Shaw. It was just a
 24 reprimand, and there was no talking at all.
 25 It was just, "We're going to have a meeting,

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58

1 acts of discrimination, you said you were under
 2 pressure in the classroom.
 3 A. Uh-huh.
 4 Q. Did you believe that to be
 5 discriminatory -- that some discriminatory motive led
 6 to you being put under pressure in the classroom, or
 7 was that just a function of the fact that you had
 8 stress associated with your job?
 9 A. I had stress going with my job, but based on
 10 the reprimands, I felt like I was under a microscope
 11 rather than being supported and accommodated.
 12 Q. So specifically with respect to discriminatory
 13 type of treatment, you felt like the issuance of these
 14 two reprimands was -- were the acts that were
 15 discriminatory in nature?
 16 A. Yes. And I wrote as such in my reply.
 17 Q. And so when you are talking about the two
 18 reprimands -- I want to make sure that I understand.
 19 The reprimand that you were given -- or the memorandum
 20 that you were given in October by
 21 Ms. Massiatto, did you believe that one to be
 22 discriminatory?
 23 A. No.
 24 Q. So that was a reasonable criticism of the fact
 25 that you hadn't turned in lesson plans on time?

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60

1 Mr. Carter, and, oh, by the way, here's a reprimand."
 2 Q. So besides the issuance of a memorandum
 3 relating to grades, which you felt like was unfair
 4 because you had been out, you believe that there was a
 5 second reprimand issued over approximately that time?
 6 A. I believe so, unless I'm getting it confused
 7 with the beginning of 2011.
 8 Q. I think that might be the case.
 9 A. Oh, okay.
 10 Q. So it's fair to say that in essence what
 11 precipitated your filing a complaint of discrimination
 12 in April of 2010 was the fact that
 13 Ms. Massiatto had given you a reprimand for not having
 14 your grades recorded in a timely manner. Is that fair?
 15 A. No. I wrote the discrimination -- I submitted
 16 the EEOC complaint because of John Folks' letter and
 17 because of the inaccurate reprimand, and I felt that I
 18 had come back from Laurel Ridge, and I had the feeling
 19 that the -- they did not want me around, because I had
 20 received no positive help or talks. It had all been,
 21 "Do your job."
 22 Q. So let me just clarify. So Ms. Massiatto's
 23 reprimand for not entering grades, Dr. Folks'
 24 recommendation that your contract not be extended and
 25 you said you felt like you weren't wanted, what was it

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61

1 -- how was it that you -- or by whom did you experience treatment that made you feel like you were not wanted?

A. At the beginning of 2010 and again a year later almost to the day, I had been subject to numerous walk-throughs, weekly meetings, the reprimand, all within the first week or two that I was back. It's like this guy just came back from Laurel Ridge and let's hammer him.

Q. Was it your understanding that the meetings that they held with you were to hammer you?

A. At first I didn't believe so.

Q. Did they not offer you help during those meetings?

A. I'd like an example of that.

Q. Well, did they? I mean, you tell me.

Based upon your perception when they met with you, did they offer you help with respect to the issues that you were having?

A. In 2010? Did they offer me help?

Q. First of all, you certainly --

A. It's difficult to classify something as helpful when you're reprimanded.

Q. Are you certain that you were having weekly meetings beginning in January of 2010?

A. No. I probably had one, maybe two meetings

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63

A. I don't remember.

Q. What do you recall about the conversation at those two meetings?

A. They went over the -- I believe they went over the lesson plans and the grades, stressing how important it was that those were done on time.

Q. Were you aware of that before you had the meeting with them, that it was important to have your lesson plans and grades submitted in a timely manner?

A. Yes. And with the exception of the October reprimand, I believe all my lesson plans had been turned in on-line and on time.

Q. Did you point that out to them in that conversation?

A. Yes.

Q. And did they accept that?

A. No. It needed to be in print in her mailbox.

Q. Were you aware of that requirement before your meeting with Ms. Shaw and Ms. Massiatto?

A. Yes.

Q. So that wasn't a surprise to you?

A. It was a surprise that they would bring up such a small matter and turn it into something that I would lose my job on later.

Q. Did they tell you that you were going to lose

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62

1 within that short time I was there.

Q. With whom did you have those meetings?

A. Massiatto and Shaw.

Q. What do you recall about those meetings?

A. I recall Ms. Shaw taking notes, writing down things that I said, going over --

Q. Do you believe it was one or two meetings in the -- in January of 2010?

A. I believe it was two by the time I left. I don't know.

Q. Do you believe that both ladies were present during those meetings, or do you believe that those meetings were held separately with those two women?

A. I believe I had a meeting with both of the women, and during those meetings I felt that it was not helpful -- they were not being helpful because they were taking notes like this was some kind of court thing.

Q. What was it about them taking notes that made you feel like it was not helpful?

A. Normal conversation between people wouldn't include taking notes on a yellow pad as you talked, and I didn't find that helpful.

Q. Were one or both of them taking notes during these meetings?

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64

1 your job?

A. They said it would reflect negatively on my next appraisal.

Q. And that's true, if you don't timely submit your lesson plans or your grades, it does reflect negatively on your appraisal, does it not?

A. At the principal's choice, yes.

Q. Do you know whether or not there were other persons -- other teachers who did not timely submit lesson plans or grades who received the same sort of treatment from Ms. Shaw or Ms. Massiatto?

A. I was unaware of that and was not told that was happening.

Q. Did it surprise you that they advised you that you were going -- that that would reflect negatively on your appraisal since you knew it was a requirement?

A. Yes, it surprised me because that's not what teaching is about. I thought that they were looking for any small matter that they could use against me to not renew my contract.

Q. Had you ever failed to turn in lesson plans or grades in a timely manner prior to this experience at Michael?

A. No, I don't believe so.

MR. PONCIO: Tell me when you're at a breaking

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65

1 point, please.

2 MR. WOOD: Now is a good time.

3 THE VIDEOGRAPHER: We're off the record at
4 10:41 a.m.

5 (Recess taken)

6 THE VIDEOGRAPHER: We're back on the record at
7 10:50 a.m.

8 Q. (By Mr. Wood) Mr. Carter, we were talking about
9 the early part of 2010 from January up until you filed
10 a charge of discrimination in April. And I want to
11 make sure that I understand what precipitated you
12 filing a charge of discrimination. You indicated that
13 you received at least one reprimand from
14 Ms. Massiatte. Is that correct?

15 A. I believe so.

16 Q. That you believe was unjust, relating to
17 grades?

18 A. Yes.

19 Q. The prior memorandum she had given you in
20 October 30th -- on October 30th you felt like was
21 justified more?

22 A. Yes.

23 Q. So when Ms. Massiatte reprimanded you for not
24 having your grades entered and when Dr. Folks
25 recommended that your contract not be extended for

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67

1 it the attitude of both ladies, of just one of them?
2 What do you recall -- what did you perceive to be
3 discriminatory during these meetings?

4 A. I was ready to go back to work, and instead of
5 receiving any support in the way of, "Welcome back, Mr.
6 Carter, let's go over a couple of things, how you
7 doing," it was, "We have a meeting scheduled and you
8 need to be there and we're going to nail you on grades
9 or lesson plans." They had no complaint about my
10 classroom at all. They had no complaint about my
11 teaching. They were picking at small matters that
12 almost any teacher would tell you those lesson plans,
13 if there's a fine detail that's left out, it's not
14 important.

15 The day flows along, and you have to
16 make adjustments. I was being criticized for not
17 having the time that the kids came back from the
18 library later on. It just -- I was being told that I
19 need to submit grades while I'm out on medical leave,
20 which I had not been notified of.

21 Q. But to be fair, you don't know whether or not
22 other teachers were reprimanded or counseled about
23 their failure to timely turn in grades or lesson plans,
24 do you?

25 A. No. I'm not interested in how other teachers

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66

1 another year, leaving you with just one year on your
2 contract, was there anything besides those two actions
3 that you felt like was discriminatory in nature when
4 you filed your complaint with -- or your charge of
5 discrimination with the EEOC?

6 A. I was released and ready to go back to work in
7 January of 2010, and was met with not support but with
8 another reprimand that I felt was unjustified, and then
9 that information was then turned over to central office
10 while I was on medical leave trying to get better from
11 a medical condition that I had.

12 Q. So specifically we're talking about the January
13 14th memorandum from Ms. Massiatte in which she advised
14 you that the failure to comply with the requirement to
15 post grades in a timely manner would be reflected in a
16 negative manner on your evaluation?

17 A. That's one of the items, yes.

18 Q. That's the only reprimand that you received
19 during that time period. Am I correct?

20 A. I don't remember if it was just one or if there
21 were two or if there were two meetings. I can't
22 remember the number of meetings and the reprimands.

23 Q. So the issuance of that reprimand, another one,
24 if it occurred, Dr. Folks' recommendation and then the
25 attitude of the ladies during those two meetings. Was

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68

1 were treated. I was not made aware of that. I was not
2 made aware that I was not going to be non-renewed
3 either.

4 Q. In June, Ms. Shaw advised you that she was
5 going to re-assign you to the first grade. Is that
6 correct? June of 2010.

7 A. Yes.

8 Q. And you thought that that was going to be a
9 good spot for you, did you not?

10 A. I came back to work willing to do whatever it
11 took to make people happy to keep my job. And if they
12 were going to put me in first grade or fifth grade, I
13 was going to take it.

14 Q. Was it your understanding that the requirement
15 to submit written materials relating to academics was
16 less for a first grade teacher than it was for a fourth
17 grade teacher?

18 A. Yes, I agree that there are -- there's less
19 testing of first graders and less requirements as far
20 as posting grades, but I was still being assigned to a
21 grade level that was brand-new to me with its own
22 stressors.

23 Q. You had actually asked for that, though, had
24 you not?

25 A. Had I asked for -- I don't recall asking for a

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69

1 specific grade level.
 2 Q. Well, when you met with Mr. Hardison, didn't
 3 suggest to him that you wanted to be re-assigned to a
 4 lower grade level?
 5 A. I believe it was just I wanted to be
 6 re-assigned to a new school. A new grade level would
 7 not alleviate the problem of Ms. Shaw and
 8 Ms. Massiatte.
 9 Q. You were advised, though, that you were not
 10 eligible for a transfer, were you not?
 11 A. I was advised that, but they are able to make
 12 transfers as needed.
 13 Q. Did you tell Ms. Shaw that you thought the
 14 re-assignment to first grade was going to be a good
 15 spot for you?
 16 A. At the time that she said it, yes.
 17 Q. So you began in August of 2010 teaching at the
 18 first grade level. Is that correct?
 19 A. I did, after having a meeting going over
 20 accommodations the previous summer.
 21 Q. With whom did you meet to discuss the
 22 accommodations in the summer of 2010?
 23 A. I was told to attend the meeting by Jim Miller
 24 to go over my coming back to school and accommodations.
 25 Q. After Mr. Miller told you to do this, with whom

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71

1 A. Because prior to that, my accommodations that I
 2 had requested had been ignored or watered down, and the
 3 meetings continued, despite my asking that the weekly
 4 mandatory meetings stop because they were causing me
 5 stress. And I felt that they were just adding more --
 6 adding more stress to me rather than helping. If they
 7 wanted to help, they would have gone with the
 8 accommodations.
 9 Q. Did they explain to you that the purpose of the
 10 weekly meetings was to help you?
 11 A. Oh, that's what they said.
 12 Q. In January, then, Ms. Shaw gave you a letter
 13 again about grade book entries, did she not?
 14 A. This is January, 2011?
 15 Q. Yes.
 16 A. Yes, I believe so.
 17 Q. And she pointed out that on several occasions
 18 she had directed you regarding that particular issue?
 19 A. Yes.
 20 Q. And that issue of timely submitting grade book
 21 entries was something that was part of your TINA, was
 22 it not?
 23 A. I don't recall the two being linked. As far as
 24 I knew, I was going according to the TINA plan and that
 25 there hadn't been a problem.

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70

1 did you meet?
 2 A. Ms. Shaw and Mr. Hardison were also there.
 3 Q. Did that take place at Michael?
 4 A. No. It took place at the central office.
 5 I had attempted to delay it because they wanted
 6 accommodations, and I told them I needed to get in
 7 touch with my doctor, but they refused to delay the
 8 conference.
 9 Q. Did you have absences during the fall of 2010
 10 then?
 11 A. I don't remember. Probably, yes.
 12 Q. You were not on leave for any period after the
 13 beginning of the 2010-2011 school year, were you?
 14 A. No, I wasn't.
 15 Q. And by December, someone had made the decision
 16 to place you on a Teacher In Need of Assistance, or
 17 what we call a TINA plan. Is that correct?
 18 A. Uh-huh.
 19 Q. What was the purpose or the stated purpose of
 20 placing you on a TINA plan in December?
 21 A. The stated purpose of a TINA plan is to help a
 22 teacher get back on track and meet the requirements
 23 that the supervisors have laid out. That's the stated
 24 goal. I don't believe that was the goal.
 25 Q. Why do you believe it was not the goal?

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72

1 Q. What was -- to your recollection, what were you
 2 focusing on with respect to the TINA plan?
 3 A. The TINA plan was focusing on classroom
 4 management.
 5 Q. When Ms. Shaw gave you the letter of reprimand
 6 in January of 2011, did she advise you that the failure
 7 to timely submit grades would reflect negatively on
 8 your evaluation?
 9 A. Yes.
 10 Q. Now, obviously this had been an issue that you
 11 felt like was unfairly directed towards you the
 12 previous January. I take it that it was no surprise at
 13 a year later that Ms. Shaw was still persistent about
 14 her insistence that grades be entered in a timely
 15 manner. You weren't surprised by that, were you?
 16 A. I was surprised to be met with two or three
 17 meetings, a couple of reprimands upon my return in
 18 January.
 19 Q. Now, you felt like in January, 2010 it was
 20 unfair to expect you to have the grades in by the due
 21 date because you had not been on campus. Was it unfair
 22 in January of 2011 to expect you to have your grades in
 23 in a timely manner?
 24 A. I would have to see the specific dates that
 25 we're discussing. I don't know what the status of the

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73

1 grade book was at that time. But every time I turned
2 in my grades, they were on time, they were complete and
3 Ms. Shaw signed off on them every time I was there.

4 Q. So is it your belief that in January of 2011
5 when you were reprimanded about failure to timely
6 submit grades, that that was just flat out untrue?

7 A. Teachers submit grades as they are -- as they
8 come in. They may not be that day. They may wait
9 until the weekend. They -- as my attorney with TSTA
10 stated, there were no -- absolutely no grade
11 requirements for Northside for first grade as far as a
12 number, and we felt that I was being retaliated or
13 discriminated against because they're focusing on such
14 a small matter, when all in the past I have always met
15 the deadlines.

16 Q. I'm going to read to you from Ms. Shaw's letter
17 to you of January 4th, 2011.

18 A. Okay.

19 Q. She says, she begins: "This memorandum is to
20 communicate the importance of entering student grades
21 in the grade book. On January 3rd, 2011, I was
22 reviewing your grade book and noticed that there were
23 insufficient grades inputted in math, reading, language
24 arts and science. By the end of the seventh week, you
25 had the following number of grades inputted per

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74

1 subject: Math, 8; reading, 8; language arts, 6; and
2 science, 3. I referenced the need for you to update
3 your grade book via a meeting on October 20th, 2010,
4 November 10th, 2010 and the walk-through forms dated
5 November 8th, 2010 and December 13th, 2010."

6 That suggests to me that Ms. Shaw had
7 met with you and counseled with you on numerous
8 occasions about the need to timely input your grades.
9 Is that consistent with your recollection of what
10 happened in the fall of 2010?

11 A. To me, the documentation of those dates back up
12 my claim that I was constantly under a microscope over
13 small matters. Some of those are within a week of each
14 other. And again, it goes to the point of not allowing
15 me any accommodation or understanding as far as Mr.
16 Carter has a medical condition and maybe we shouldn't
17 focus so much on these little matters when he's doing a
18 good job with his class.

19 Q. So your notion is that Ms. Shaw should have
20 just kept her nose out of it and not followed up to
21 make sure as to whether or not you had inputted your
22 grades in a timely manner?

23 A. I found it curious that she focused on January
24 3rd, the day I came back.

25 Q. Well, in her letter she also says: "At the

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75

1 beginning the year, all staff were reminded through the
2 Michael staff handbook to keep their grade book updated
3 with consistency amongst the team members."

4 Was that true? Was that statement true?

5 A. Yes.

6 Q. And she said: "We visited this subject again
7 at the team leader meeting on November 1, 2010."

8 Was that true?

9 A. I wasn't there.

10 Q. That wasn't true, y'all didn't --

11 A. I wasn't there.

12 Q. Oh, you weren't there.

13 She says: "Your team leader discussed
14 this with the entire grade level on November 2nd,
15 2010."

16 Were you present for that?

17 A. Yes. I don't recall the number of exact grades
18 that she wanted.

19 Q. Well, she says you all agreed to take two
20 grades weekly in each subject. Had you agreed to that?

21 A. Yes.

22 Q. And she says it was also discussed to input the
23 grades on a weekly basis. Do you remember that
24 discussion?

25 A. Yes.

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76

1 Q. Now, you understood, and she explains in her
2 letter, that the purpose of having the grades inputted
3 on a timely manner -- in a timely manner is so that the
4 parents can view the grades through the Parent
5 Connection. Is that right?

6 A. Certainly.

7 Q. And it's important for them to be able to do so
8 to monitor their child's progress, is it not?

9 A. Certainly.

10 Q. And if you have not inputted those grades in a
11 timely manner, those parents are not going to be able
12 to monitor their child's progress? Is that accurate?

13 A. Wouldn't be able to monitor it from that the --
14 that's true.

15 Q. Do you believe it was unfair for Ms. Shaw to
16 give you this letter on January 4th, 2011, indicating
17 that she was going to expect your grades to be input in
18 a timely manner?

19 A. I believe it was unfair. It was unfair because
20 she had come back from Christmas break loaded up with
21 ammo with anything she could to make sure that I wasn't
22 renewed that following year. She had already
23 recommended that I not work there anymore, and in order
24 to justify me not getting my contract renewed, she
25 needed more than what she had.

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77

1 Q. You say it was unfair because she came back
2 from Christmas break loaded up for bear, but,
3 in fact, she had met with you about that same issue in
4 October and November and December, had she not?

5 A. Yes, because we had mandatory weekly meetings,
6 and we went over everything with a fine-tooth comb,
7 after I had requested that those meetings not occur.
8 And my TSTA attorney had also requested that.

9 Q. You -- then about a week later after she gave
10 you that letter, you again submitted a discrimination
11 and retaliation claim, did you not?

12 A. Yes, but it wasn't specifically just for that
13 letter.

14 Q. What else besides that letter was there that
15 led you to submit a discrimination and retaliation
16 claim?

17 A. The reasons are listed on the EEOC form, but I
18 believe it would say that I came back with a couple of
19 reprimands, three observations -- I'm not sure --
20 possibly four, all within the first four days back at
21 work.

22 Q. After the Christmas break is up?

23 A. Uh-huh.

24 Q. Once you filed that claim of discrimination and
25 retaliation, EEOC asked to you submit information to

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79

1 said, "Duly noted."

2 Mr. Hardison quickly backtracked, said,
3 "Well, we need to look at it all. We'll see."

4 I had five accommodations listed on that
5 that would have helped me in the coming school year, as
6 documented by my doctor, not just me. I asked that I
7 be re-assigned to another campus to get a fresh start.
8 I asked that the lesson plans be due on Monday instead
9 of Friday, a practice that could have easily have been
10 done and is done at other campuses. I asked that I be
11 put in a grade level that I'm familiar with. Instead I
12 was put into first grade, which is an entirely
13 different ballgame than fourth grade.

14 And there were five accommodations. I
15 don't have my paper in front of me. But I asked that
16 the -- I have a weekly meeting with my team to go over
17 lesson plans and such, and that was quickly done away
18 with within the first month. She said we are each
19 responsible for our own lesson plans and we weren't
20 going to have team meetings for that purpose.

21 Q. Were any of these accommodations that you
22 requested during the summer of 2010 extended to you?

23 A. I can't think of one.

24 Q. I guess I'm confused because in June of 2010 is
25 when Ms. Shaw advised you that you would be assigned to

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78

1 support those claims, did they not?

2 A. I don't remember getting that.

3 Q. Do you remember -- were you copied with a
4 letter that the EEOC sent to your attorney,
5 Mr. Poncio, requesting that you submit information and
6 evidence in support of your claims?

7 A. I would imagine that would have happened, but
8 I'm not aware of it.

9 Q. Isn't it true that you did not submit any type
10 of information or evidence in support of those claims
11 to EEOC?

12 A. I don't recall submitting any answers to EEOC.
13 I wasn't aware that they were pursuing it. In the past
14 they just took the complaints and didn't do anything
15 with it.

16 Q. Tell me every act of what you perceive to be
17 discrimination or retaliation that took place during
18 the 2010-2011 school year that you were subjected to.

19 A. In my meeting before the school year started, I
20 had requested, at Mr. Miller's request, some
21 accommodations. When told of the accommodations, he
22 was dismissive. And I said, "Is it your intent not to
23 give me any of those accommodations?"

24 And he picked up the paper of my
25 accommodations and just dropped it in the file and

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80

1 the first grade, and my understanding was that you told
2 her that you thought that was a good spot for you.

3 A. I told her as an employee, just accepting
4 whatever she told me.

5 Q. You sent Ms. Carter an e-mail on June 15th,
6 2010, and you said in it, "I told you" -- "I told him,"
7 you're talking about your meeting with
8 Mr. Hardison, "you had already assigned the first grade
9 job and that it sounded like a good spot for me." Is
10 that correct? Is that what you told
11 Ms. Shaw?

12 A. I believe I told Ms. Shaw that, yes.

13 Q. You were describing for me the actions that you
14 believe to be discriminatory in 2010-2011. Anything
15 else?

16 A. I came back to work under a microscope of
17 weekly meetings, going over everything that I did in
18 the classroom or didn't do. I was told that I could
19 ask Ms. Ardyea Welch for help in June or July. At the
20 time I declined. However, she came in January and
21 said, "We're going to observe your classroom."

22 "Fine, I'll go along with that."

23 "And at the end we'll give you some
24 recommendations as far as how we can make your
25 classroom management better."

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81

1 "That's fair."
 2 So she did.
 3 Q. Did you perceive that you were having problems
 4 with classroom management?
 5 A. I myself didn't think so. I had not been
 6 written up for classroom management. There was an
 7 appraisal where they marked me down for classroom
 8 management. But Ms. Welch's letter was not helpful.
 9 She just turned over the information to my principal,
 10 saying how deficient my classroom management was and
 11 that she would not recommend -- I can't remember the
 12 wording -- wouldn't recommend me to continue or
 13 something like that. And then I responded with a
 14 letter saying it's not what I expected, and I never
 15 heard from her again. So she wasn't there to help. She
 16 never responded.
 17 Q. Did you believe that Ms. Welch discriminated
 18 against you?
 19 A. I think it was an unfair characterization of my
 20 class, and then I believe it was used by -- I would
 21 like to know who assigned her to visit my classroom.
 22 Q. You indicated in your correspondence to
 23 Ms. Welch that you thought that she had been cordial
 24 and helpful while she was actually in the room with
 25 you, did you not?

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83

1 that paperwork.
 2 Q. Dr. Folks notified you then that he was going
 3 to recommend that your contract not be renewed at the
 4 end of the year. Is that correct?
 5 A. Yes.
 6 Q. And was it your understanding that if you
 7 wanted to, you would have been entitled to a hearing
 8 before the board of trustees to contest that decision?
 9 A. Yes, I was aware of that.
 10 Q. You understood that if you were non-renewed,
 11 that that might have a negative impact on your future
 12 employability?
 13 A. I'm certainly aware of that.
 14 Q. Dr. Folks notified you that in lieu of
 15 recommending you for non-renewal, that you would have
 16 the option to resign?
 17 A. I don't believe he said that in the letter. I
 18 don't recall.
 19 Q. Nonetheless, in April of 2011, you did submit a
 20 letter of resignation, did you not?
 21 A. I resigned because I could not work at
 22 Northside if they weren't going to give me the
 23 accommodations to do my job. And it seemed of less
 24 damage then to be non-renewed.
 25 Q. Let's talk for a moment then about -- well,

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82

1 A. While she was there, yes.
 2 Q. And then when she was critical of your
 3 classroom management, did you believe that to be
 4 discriminatory?
 5 A. Taking that information and going to the
 6 principal with it, to me it sounded like that I was
 7 just being set up. This was more ammo saying Carter's
 8 not cutting it, we have to get more documentation, and
 9 -- because she wasn't helpful.
 10 She didn't write me back. We didn't have a meeting
 11 afterwards. It was just used by Ms. Shaw later that
 12 day to say that I wasn't fit for the job.
 13 Q. Besides Ms. Welch and Ms. Shaw,
 14 Ms. Massiatte and Dr. Folks, is there anyone else that
 15 you believe perpetrated any type of discrimination or
 16 retaliation towards you?
 17 A. Geri Garza or Garcia, I don't remember her
 18 name. She was the vice-principal at the time. She was
 19 in on all meetings and was aware of what was happening.
 20 I believe she was the one that wrote up the appraisals
 21 on me. Again, I don't recall Ms. Shaw ever doing a
 22 formal observation on me. I find it remarkable that
 23 someone who would recommend that I be fired never do a
 24 formal observation on me.
 25 I could be wrong, but I haven't found

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84

1 first of all, let me ask you: Have you told me about
 2 every instance of what you considered to be either
 3 discriminatory or retaliatory conduct towards you that
 4 you can recall?
 5 A. The lack of accommodations, the intense
 6 scrutiny I was put under, the lack of support. And if
 7 they really wanted to help, I think they would have
 8 been helpful rather than just shuffle papers my way
 9 saying you've screwed up. And the fact that they
 10 ignored my doctor's request. There may be more, but
 11 those are the ones that stand out.
 12 Q. Let me talk to you about the shuffling papers
 13 to say you screwed up. It's fair to say that in
 14 January -- that on January 15th of 2010 when the grades
 15 were supposed to be inputted into the computer, it's
 16 fair to say that they were not in the computer, isn't
 17 it? Regardless of who's responsible, it's fair to say
 18 that the grades were not in there?
 19 A. That's fair to say.
 20 Q. And right or wrong, they were critical of you
 21 for not having those grades in there in January of
 22 2010?
 23 A. Yes.
 24 Q. By the time you got to October then, October,
 25 November, December and then January of 2011, they're

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85

1 still meeting with you, sending you written
2 correspondence saying it's a problem that your grades
3 are not input on a timely basis. You acknowledge that?

4 A. I acknowledge that. But, again, the grades
5 were always done on time and signed off by Ms. Shaw
6 when they were due. When it came time to the six weeks
7 progress reports, when it came time to the report
8 cards, everything was there. I don't recall any
9 complaints from parents regarding the matter. I was
10 not made aware of any complaints by any parents.

11 Q. Well, if the grades were always there on time
12 when they were supposed to be -- I take it when you say
13 that, you're meaning by the end of the semester?

14 A. By the end of the six weeks progress reports
15 and then again on the report card time, yes.

16 Q. And Ms. Shaw suggests that as a team you-all
17 had agreed that they would be done on a more frequent
18 basis, that they would be input on a weekly basis?

19 A. Yes, but my team was not doing the grade book;
20 I was. And I was attempting to deal with depression
21 and anxiety symptoms where I had to prioritize what
22 needs to be done in the classroom.

23 Q. So when the team agreed to this, I guess your
24 testimony is that you had not agreed to that?

25 A. I agreed to that. I mean, I heard it,

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87

1 Q. I think you said you had one in October --
2 October 30th of 2009 relating to lesson plans, but you
3 felt like that one was justified?

4 A. I felt that was justified. That was just
5 before I went in the partial hospitalization.

6 Q. So the removal of those two reprimands, the
7 January, 2010 and January, 2011, would give you a clean
8 record. Anything else that you would need in order to
9 have a clean record?

10 A. I would have to see my file to know what's in
11 there. I don't remember what's in there.

12 Q. Other than those two items, the possibility of
13 having your job back or having your file cleaned up in
14 the manner you just described, anything else that you
15 would ask the court to award?

16 A. I'd ask them to consider the grief or stress
17 that this has caused over the last year or two, and --
18 I felt like I could do my job if I had the support from
19 central office and from Ms. Shaw beginning back in June
20 or July, whenever we met. But it was clear from then
21 on that I was not going to receive support, that they
22 were dismissive of my illness, dismissive of my
23 doctors' notes. So I would like to be compensated for
24 the mental anguish that that has caused me and my
25 family.

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86

1 understood it.

2 Q. So is it fair to say that you agreed to it?

3 A. Yes. But again, it was a matter of priorities
4 when I was juggling with a medical condition and lack
5 of accommodations.

6 Q. You have asked the court to award you damages
7 with respect to your claim -- your claims of
8 discrimination and retaliation. Is that correct?

9 A. Yes.

10 Q. What sorts of damages do you believe that you
11 are entitled to?

12 A. I'm entitled to have my job back. Or at least
13 a clean record so I can go somewhere else.

14 Q. When you say, "a clean record," what exactly
15 does that look like to you?

16 A. The discriminatory reprimands are removed and
17 any references to those are taken out.

18 There may be additional ones, but I --

19 Q. And when we're talking about the discriminatory
20 reprimands, I take it that that would be the reprimand
21 in 2010 about not timely inputting grades and then the
22 second reprimand in January of 2011 also relating to
23 grades. Is that correct?

24 A. I think so. And there's probably one on lesson
25 plans. And --

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88

1 I remain unemployed. I'm not employable
2 as a teacher with this on my record. I --

3 Q. What makes you believe that you're not
4 employable as a teacher? Because my understanding is
5 that you resigned from your position. What makes you
6 believe that that would render you unemployable?

7 A. One of the first questions, I believe it's at
8 the Southwest School District, is: Have you ever been
9 notified that your contract will not be renewed or
10 extended? And immediately that would toss me out of
11 the personnel file.

12 Q. Let me get to that in a moment.

13 You were talking about an award for
14 mental anguish. And I guess it's going to be hard for
15 -- it would be hard for me to tease out how to measure
16 that. Beginning in 2005 you began suffering from
17 severe depression episodes. How has that situation
18 changed due to any actions from anyone within
19 Northside?

20 A. During my time at my worst in Pleasanton, I
21 received nothing but positive commendations and letters
22 and support. My deciding to leave was entirely my
23 choice based on I'm tired of everyone seeing me being
24 upset here.

25 And I understand it's difficult to come

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89

1 up with any kind of figure for mental anguish.
 2 I don't know what that would be. But I've lost a
 3 couple of years -- I mean, when I was at my worst in
 4 Pleasanton, I was still doing my job. I never filed a
 5 lawsuit against them. I never even asked for
 6 accommodations. And I was in far worse shape.
 7 Instead of giving me and offering support, they cranked
 8 up the heat, looked for the things that I was doing
 9 wrong.

10 So I can't -- it's my understanding that
 11 I can't get a teaching job at this point. So my next
 12 ten years of teaching are gone. I mean, I had a
 13 20-year career in teaching until this occurred. Part
 14 of it is depression. Most of it is not being allowed
 15 to work with it.

16 Q. You mentioned that you were in far worse shape
 17 when you were employed with Pleasanton. At that time
 18 you were, I think you described, crying on a daily
 19 basis at school.

20 A. Uh-huh.

21 Q. That did not occur at any point while you were
 22 employed by Northside, did it?

23 A. On a daily basis, no.

24 Q. At the time that you were employed by
 25 Pleasanton and you were suffering from those kinds of

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91

1 Q. So maybe the tail end of 2009 or the first part
 2 of 2010?

3 A. Right.

4 Q. And how often did you attend counseling then
 5 with Crossroads beginning at that time period?

6 A. I would still say a couple times a month.
 7 Probably out until -- I would have to check the
 8 records. Maybe April things slowed down.

9 Q. April of 2010?

10 A. I'm getting my years mixed up now.

11 Q. In June you were notified that you would be
 12 teaching the first grade. So by that point you had
 13 slowed down in seeing Crossroads?

14 A. Yes.

15 Q. And how frequently were you going to Crossroads
 16 for counseling beginning in April of 2010?

17 A. At least monthly, possibly biweekly. I don't
 18 remember. Sorry.

19 Q. When was the last time you went in for any kind
 20 of counseling?

21 A. Counseling was in probably October. I don't
 22 believe I saw her in November. We couldn't afford the
 23 copayments anymore.

24 Q. After April of 2010 and up until October, did
 25 your frequency of going to Crossroads for counseling

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90

1 severe fits of depression, you indicated that you were
 2 going in to see Dr. Villanueva on a weekly basis. Is
 3 that correct?

4 A. Uh-huh.

5 Q. Have you since your -- you began having the
 6 difficulties with Northside, how often have you sought
 7 some sort of psychological counseling?

8 A. It was a couple of times a month. I can't
 9 remember. But it was a couple of times a month during
 10 when things were stressful, and then it went to
 11 monthly. That was with Crossroads Christian
 12 Counseling.

13 Q. When did you begin attending counseling at
 14 Crossroads?

15 A. That was 2010. I might have seen
 16 Dr. Villanueva once.

17 Q. Approximately when in 2010 did you begin seeing
 18 Crossroads?

19 A. I'm pretty sure I saw her a couple times in
 20 January. It might have even been before 2010. I don't
 21 recall when I started up with her.

22 Q. Was it before your partial hospitalization at
 23 Laurel Ridge?

24 A. No, I didn't -- I would have seen
 25 Dr. Villanueva then.

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92

1 increase or decrease or stay about the same?

2 A. Stayed about the same, I believe, at once a
 3 month.

4 Q. About once a month. And were you seeing any
 5 other treatment provider besides Crossroads during that
 6 time period of April of 2010 to October of this year?

7 A. Dr. Salinas would see me.

8 Q. How frequently?

9 A. At least month -- well, at the beginning it
 10 was, like in January of 2011 -- what are we talking
 11 about, what years?

12 Q. April of 2010 to October of 2009 (sic).

13 A. I would stick with my monthly estimate that I
 14 saw her monthly. There were times when I saw her a
 15 couple times a month.

16 Q. What about when -- back when you were having
 17 more severe issues in your time at Pleasanton, how
 18 often did you see Dr. Salinas at that point?

19 A. I was -- wasn't with her yet. I was at the
 20 Alamo Mental Health Clinic, and I'd go once a month, I
 21 believe; and I saw Dr. Villanueva every week.

22 Q. With respect to your claims of mental anguish
 23 then, are you indicating that you have had any kind of
 24 marital difficulties because of this?

25 A. It's been very hard on my wife to see me lose

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93

1 my job and to deal with that financially and my
2 emotions as far as the tearfulness and just crashing at
3 home and being useless, but...
4 Q. Have y'all found it necessary to seek any kind
5 of counseling with respect to that issue?
6 A. Dr. Salinas suggested it, but my wife's not
7 really interested in doing that.
8 Q. Are you making any claim for loss of
9 consortium?
10 A. I need to talk to my attorney. I don't know.
11 MR. PONCIO: We haven't made that claim.
12 MR. WOOD: Okay.
13 MR. PONCIO: Can we take a break?
14 MR. WOOD: Absolutely, that's fine.
15 THE VIDEOGRAPHER: We're off the record at
16 11:38 a.m.
17 (Recess taken)
18 THE VIDEOGRAPHER: We're back on the record at
19 11:45 a.m.
20 Q. (By Mr. Wood) Mr. Carter, I'm going to back up
21 for a second before we continue talking about damages.
22 You indicated that in June you submitted a request for
23 accommodation or accommodations to the school district.
24 Mr. Hardison wrote you a letter, do you recall, in July
25 of 2010 when he addressed those?

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95

1 plans are essential to the successful instruction of
2 students. As has been mentioned to you, the team
3 leader will complete the lesson plans and post them
4 on-line after each week's planning meeting. You'll
5 need to personalize these plans to reflect any special
6 needs of your students to incorporate your
7 instructional schedule and to add any unique or
8 additional instructional aids or materials. As you
9 know, these lesson plans are also used by special
10 education teachers and, if needed, substitute
11 teachers."
12 Are those statements true?
13 A. Yes.
14 Q. And then he says: "Because lesson plans are
15 critical to the effective instruction of students, we
16 will continue to require that your lesson plans for
17 Monday be submitted by the Friday before. However, we
18 are willing to grant you the accommodation that your
19 lesson plans for days Tuesday through Friday will not
20 be due until Monday morning."
21 That was an accommodation that was not
22 afforded to other teachers. Is that correct?
23 A. I do not know what they require of other
24 teachers.
25 Q. He also adds in his letter to you: "In

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94

1 A. Yes.
2 Q. And, in fact, he granted several -- or the
3 school district granted several of those requested
4 accommodations, did they not?
5 A. On paper they said they did, but that's not
6 what happened in practice.
7 Q. Well, let me ask you about this. You had
8 requested team planning with your grade level to
9 discuss student progress and plan for the coming week.
10 They granted that one. Is that correct?
11 A. On paper they did, but within a month that was
12 changed. We just had team meetings as necessary, and
13 it wasn't to go over team planning because team
14 planning was done away with.
15 Q. You had also asked that your lesson plans be --
16 that you be allowed to turn your lesson plans in later
17 in your request for accommodations, and they told you
18 that the lesson plans for Monday needed to be in by
19 Friday but the remainder of them did not have to be in
20 until the next week. Is that correct?
21 A. Yes. But I had asked that all the lesson plans
22 be due on Monday. That was a small request. Could have
23 been granted easily.
24 Q. I think Mr. Hardison stresses to you in his
25 letter, and his particular response says: "Lesson

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96

1 discussions with Ms. Shaw, we anticipate that you may
2 find that delay is not even necessary since the
3 portions of the lesson plans which you will be
4 tailoring will require minimal adjustment from week to
5 week."
6 Did you find that to be the case?
7 A. Yes, that was the case. It was minimal
8 adjustments.
9 Q. And so you didn't have any issue with respect
10 to timely completion of lesson plans after this
11 particular concession was offered by
12 Mr. Hardison, did you?
13 A. I still found the fact that there wasn't,
14 granted for me to do the lesson plans by Monday in
15 entirety, a small -- it was something that could have
16 been -- easily be granted. We're talking about minutia
17 here. And when we mention the lesson plans and
18 personalizing them, that means that when I got in
19 trouble thereafter, I got in trouble for not putting in
20 what class we went to, what time we came back from the
21 library -- minor issues -- again, you can find a
22 mistake with anybody, and I believe they were just
23 looking for it.
24 Q. One of the other accommodations that you had
25 requested was that the meetings with administration be

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97

1 lessened. And Mr. Hardison says in his letter to you:
2 "The meetings with administrators are designed to
3 assist you with issues which have previously been
4 identified in performance evaluations, and they were in
5 part in response to your suggestion to Ms. Shaw that
6 you needed assistance with prioritizing. At your
7 request, we are going to suspend those weekly meetings
8 at this time."

9 Was it your understanding that they
10 would agree to do that?

11 A. That was my understanding, but that's -- again,
12 in practice that's not what happened. I was required
13 to go to meetings shortly after school started.

14 Q. Were they weekly?

15 A. At one point they became weekly. I don't
16 remember the date. And again, I -- at my request, I
17 asked that they not have the weekly meetings because
18 they were stressful and caused me to get upset and
19 sometimes leave work. So their accommodation for that
20 was, well, we'll just have them later in the day. That
21 was hardly an accommodation.

22 Q. Well, in fact, Mr. Hardison specifically says:
23 "If requested, so as not to affect your daily teaching
24 performance, the meetings will be scheduled for periods
25 after the end of the instructional day."

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99

1 and that question just kicked me out. So it's like...

2 Q. Have you ever filed any other lawsuits,
3 grievances, administrative actions other than the two
4 complaints with EEOC and the instant lawsuit?

5 A. And which one?

6 Q. The instant lawsuit.

7 THE WITNESS: What's that?

8 MR. PONCIO: Any others besides this one.

9 A. Yes.

10 Q. (By Mr. Wood) In what instance?

11 A. Northside's provider of disability insurance
12 denied me disability insurance, then Northside's
13 provider of workman's comp denied me workmen's comp.
14 So I fought both of them.

15 Q. Did you file a lawsuit in those instances?

16 A. I retained counsel for the workmen's comp one,
17 and the disability one they did file a lawsuit.

18 Q. Who represented you in the disability lawsuit?

19 A. Greg Reed.

20 Q. What was the final resolution of that?

21 A. It was an out-of-court settlement.

22 Q. What was the amount of that out-of-court
23 settlement?

24 MR. PONCIO: You can't disclose that. It's
25 confidential.

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1 A. The same stressful meetings would be required
2 of me.

3 Q. Did you make the request that those meetings be
4 held later in the day rather than earlier in the day?

5 A. Yes.

6 Q. And did they grant that request?

7 A. Yes.

8 Q. We were talking then about your request for
9 damages, and I believe that you indicated that you're
10 not seeking loss of consortium. My understanding is
11 that you're seeking an amount for lost wages, past and
12 future. Have you sought employment at any other
13 potential employers since the time that you resigned
14 your position with Northside?

15 A. Yes.

16 Q. Where have you sought other employment,
17 alternative employment?

18 A. JC Penney, Petco, Hobby Lobby, USAA, Department
19 of Health and Human Services, a couple of other retail
20 places. And a Federal worker administering tests for
21 the Army.

22 Q. Have you applied with any school districts?

23 A. No.

24 Q. No?

25 A. No. I got to the Southwest School District.

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100

1 Q. (By Mr. Wood) When was that matter resolved?

2 A. November of 2010.

3 Q. Was that filed in the Bexar County District
4 Courts?

5 A. Yes.

6 Q. You said the resolution of the other one -- I'm
7 sorry, I was unclear. You did not file a lawsuit in
8 the other matter?

9 A. No. The attorney dropped it.

10 Q. There was no settlement there?

11 A. No settlement.

12 Q. Any other grievances that you filed?

13 A. No. "Any other grievances," I'm not sure what
14 you mean by that.

15 Q. Well, I just wondered if you've ever filed a
16 grievance with a school district.

17 A. No.

18 Q. Just looking through some documents here.

19 Carol Walters. Is she the therapist
20 that you see through Crossroads Christian Counseling?

21 A. Yes.

22 MR. WOOD: Can we take about five minutes, Mr.
23 Poncio? I just want to make sure that I've covered
24 everything in my notes.

25 MR. PONCIO: Sure.

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101

1 THE VIDEOGRAPHER: We're off the record at
 2 11:55 a.m.
 3 (Recess taken)
 4 THE VIDEOGRAPHER: We're back on the record at
 5 12:02 p.m.
 6 Q. (By Mr. Wood) Mr. Carter, have you understood
 7 the questions that I've asked you today?
 8 A. Yes.
 9 Q. Is there anything that you felt like you did
 10 not understand?
 11 A. No, I understood everything.
 12 Q. Is there anything, after you reflect back, that
 13 you believe you need to change with respect to answers
 14 you've provided earlier?
 15 A. I may have the dates -- the 2010, 2011 thing
 16 mixed up. And also as far as when I was working --
 17 when I was good to go at work. I don't remember when I
 18 said. I don't know if it was before Laurel Ridge. You
 19 asked me that question whether you were ready to go
 20 back to work or if it was after.
 21 Q. Anything else you feel like you need to add at
 22 this point?
 23 A. No.
 24 MR. WOOD: I appreciate your time and patience,
 25 and thank you very much.

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102

1 THE WITNESS: Sure.
 2 MR. PONCIO: We'll reserve our questions.
 3 THE VIDEOGRAPHER: We're off the record on
 4 December 19th, 2011, at 12:04 p.m.
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103

1 CHANGES AND SIGNATURE
 2 GERALD LEON CARTER
 3 December 19, 2011
 4 PAGE LINE CHANGE REASON
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104

1 I, GERALD LEON CARTER, hereby certify that I
 2 have read the foregoing deposition; and that this
 3 deposition, together with any corrections noted on the
 4 errata sheet, is a true record of my testimony given at
 5 this deposition and all answers are within my personal
 6 knowledge and are true and correct.

GERALD LEON CARTER

11 Before me the undersigned authority, personally
 12 appeared GERALD LEON CARTER who, upon her oath, states
 13 that all answers given by her in the foregoing
 14 deposition are within her personal knowledge and are
 15 true and correct.

17 SUBSCRIBED AND SWORN TO BEFORE ME, this
 18 ____ day of _____, A.D. 20__.

22 NOTARY PUBLIC IN AND FOR
 23 THE STATE OF _____

25 My Commission Expires: _____

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105

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION
4 GERALD CARTER }
5 vs. } CASE NO. 5:11-cv-00492 FB
6 NORTHSIDE INDEPENDENT }
7 SCHOOL DISTRICT }
8
9 STATE OF TEXAS
10 COUNTY OF BEXAR
11
12 I, Terrilyn Paul, Certified Shorthand Reporter in
13 and for the State of Texas, do hereby certify that the
14 facts stated and set forth on the caption hereto are
15 true; that after the witness, GERALD LEON CARTER, had
16 been by me first duly cautioned and sworn to tell the
17 truth, the whole truth and nothing but the truth, the
18 foregoing questions were propounded to him by the
19 attorneys named in the caption hereto, and that the
20 foregoing answers were made by said witness at said
21 time in response to said questions so propounded to the
22 said witness and the said answers in response thereto
23 were by me, at said time and place, taken down in
24 shorthand on December 19, 2011, and that the foregoing
25 is a true record of the testimony given by the witness.

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106

1 Pursuant to information given at the time said
2 testimony was taken, the following includes all parties
3 of record and the amount of time used by each party at
4 the deposition:
5
6 Mr. Adam Poncio 0 hours 0 minutes
7 Mr. D. Craig Wood 2 hours 32 minutes
8
9 Request having been made prior to the completion
10 of the deposition for the deponent to review said
11 testimony, the transcript was delivered to MR. ADAM
12 PONCIO for review and signature by the deponent, with
13 instructions that the deposition be returned to me
14 within 30 days of receipt thereof, along with a
15 completed errata sheet if necessary.
16
17 I further certify that I am neither attorney or
18 counsel for, nor related to or employed by any of the
19 parties to the action in which this deposition is
20 taken, and further that I am not a relative or employee
21 of any attorney or counsel employed by the parties
22 thereto or financially interested in the action.
23
24
25

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107

1 WITNESS MY HAND AND SEAL OF OFFICE this
2 the 4th day of January, 2012.
3
4
5 Terrilyn Paul Crowley
6 Terrilyn Paul Crowley, CSR
7 Certified Shorthand Reporter
8 in and for the State of Texas
9 Certificate No. 5113
10 Expiration Date: 12/31/12
11 EDDIE MORRIS COURT REPORTERS
12 Firm Registration No. 74
13 Expiration Date: 12/31/12
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

GERALD CARTER

V.

**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT**

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§
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CIVIL ACTION NO. 5:11-CV-492 FB

ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On this the ____ day of _____, 2012, came on to be considered the Defendant's Motion For Summary Judgment and Motion for Partial Dismissal (Dkt 20). The Court finds that the Motion should be DENIED.

SIGNED THIS THE ____ DAY OF _____, 2012

HONORABLE FRED BIERY
DISTRICT JUDGE